IMPLEMENTATION OF THE HELSINKI ACCORDS

HEARING

BEFORE THE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

NINETY-NINTH CONGRESS

SECOND SESSION

1952 McCARRAN-WALTER ACT

FEBRUARY 6, 1986

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PUBLIC HEARING ON THE 1952 McCARRAN-WALTER ACT

THURSDAY, FEBRUARY 6, 1986

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,
Washington, DC.

The Commission met, pursuant to notice, in room 2212, of the Rayburn House Office Building, Independence Avenue and South Capitol Street SW., at 10 a.m., Senator Alfonse M. D'Amato, Chairman, and Representative Steny H. Hoyer, Cochairman, presiding.

In attendance: Senator Malcolm Wallop, Commissioner.

Also in attendance: Michael R. Hathaway, staff director, and Mary Sue Hafner, general counsel of the Commission.

OPENING STATEMENT OF CHAIRMAN D'AMATO

Chairman D'AMATO. This morning, the Helsinki Commission will receive testimony concerning U.S. compliance with the Helsinki Final Act.

Specifically, we will examine whether sections 212(a) (27), (28), and (29) of the McCarran-Walter Act agree with our commitment under the Final Act "to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating states."

When the United States joined 34 other nations as signatories to the Helsinki Final Act in 1975, we agreed "to simplify and administer flexibly the procedures for exit and entry," and "to facilitate the convening of meetings and travel by delegations, groups and individuals."

The Human Contacts Experts' Meeting begins in Bern, Switzerland, on April 15.

These provisions of the McCarran-Walter Act will unquestionably be discussed there and may be employed by the Soviet Union and its Warsaw Pact allies to impeach United States compliance with our commitments under the Final Act.

It is, therefore, timely for us to take this opportunity to hear the views of our distinguished witnesses.

I am going to ask that the balance of my remarks be included in the record and move ahead to our witnesses.

[The full statement of Chairman D'Amato follows:]

SENATOR ALFONSE D'AMATO

OPENING STATEMENT

HELSINKI COMMISSION HEARING

ON

MCCARRAN-WALTER ACT

THIS MORNING, THE HELSINKI COMMISSION WILL RECEIVE TESTIMONY CONCERNING UNITED STATES' COMPLIANCE WITH THE HELSINKI FINAL ACT. SPECIFICALLY, WE WILL EXAMINE WHETHER SECTIONS 212(A)(27), (28), AND (29) OF THE MCCARRAN-WALTER ACT AGREE WITH OUR COMMITMENT UNDER THE FINAL ACT "TO FACILITATE FREER MOVEMENT AND CONTACTS, INDIVIDUALLY AND COLLECTIVELY, WHETHER PRIVATELY OR OFFICIALLY, AMONG PERSONS, INSTITUTIONS AND ORGANIZATIONS OF THE PARTICIPATING STATES."

WHEN THE UNITED STATES JOINED THIRTY-FOUR OTHER NATIONS AS SIGNATORIES TO THE HELSINKI FINAL ACT IN 1975, WE FURTHER AGREED "TO SIMPLIFY AND ADMINISTER FLEXIBLY THE PROCEDURES FOR EXIT AND ENTRY," AND "TO FACILITATE THE CONVENING OF MEETINGS AND TRAVEL BY DELEGATIONS, GROUPS AND INDIVIDUALS."

THE HUMAN CONTACTS EXPERTS' MEETING BEGINS IN BERN, SWITZERLAND, ON APRIL 15TH. THESE PROVISIONS OF THE

MCCARRAN-WALTER ACT WILL UNQUESTIONABLY BE UNDER DISCUSSION THERE AND MAY BE EMPLOYED BY THE SOVIET UNION AND ITS WARSAW PACT ALLIES TO IMPEACH UNITED STATES' COMPLIANCE WITH OUR COMMITMENTS UNDER THE FINAL ACT. IT IS THEREFORE TIMELY FOR US TO TAKE THIS OPPORTUNITY TO HEAR THE VIEWS OF OUR DISTINGUISHED WITNESSES.

THE SOVIET UNION, AS A MATTER OF CONSISTENT STATE POLICY, COMMITS THE MOST BLATANT AND CRUEL VIOLATIONS OF ITS PROMISE UNDER THE HELSINKI FINAL ACT TO RESPECT HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. THE FAMOUS HUMAN RIGHTS CASES ARE SYMBOLS OF A GENERAL SOVIET DISDAIN FOR CIVILIZED VALUES. FOR EVERY SAKHAROV, SCHARANSKY, ORLOV, AND BEGUN, THERE ARE MILLIONS OF OTHER ORDINARY SOVIET CITIZENS SUFFERING AND DYING IN THE WORLD'S LARGEST COMPLEX OF PRISONS, SLAVE LAOBR CAMPS, AND PSYCHIATRIC "HOSPITALS."

OVER THE HISTORY OF THE SOVIET STATE, SOVIET AUTHORITIES HAVE BEEN DIRECTLY RESPONSIBLE FOR MORE HUMAN DEATH AND MISERY THAN ADOLF HITLER AND HIS NAZI BUTCHERS. THIS RECORD OF BLOOD AND DEATH BEGINS WITH THE OCTOBER REVOLUTION, PROCEEDS THOUGH SUCH BENCHMARKS OF MAN'S INHUMANITY TO MAN AS THE COLLECTIVIZATION OF SOVIET AGRICULTURE AND THE DESTRUCTION THROUGH A PLANNED FAMINE OF THE KULAKS, STALIN'S PURGES AND SHOW TRIALS, THE EXTERMINATION OF THOSE WHO COOPERATED WITH OR FOUGHT FOR THE NAZIS, AND THE CONTINUED MAINTENANCE AND OPERATION OF THE GULAG ARCHIPELAGO.

CAST AGAINST THE ROUGHLY 5 MILLION SOVIET CITIZENS HELD UNDER INCREDIBLY BRUTAL CONDITIONS IN THE GULAG, AGAINST THE SOVIET UNION'S CRUEL PERSECUTION OF PENTACOSTALS, JEWS, BAPTISTS, UKRAINIAN CATHOLICS, AND OTHERS WHO SIMPLY SEEK THE FREEDOM TO PRACTICE THEIR RELIGIOUS FAITHS IN PEACE, ANY DIFFICULTIES WE MAY HAVE IN COMPLYING WITH THE TERMS OF THE FINAL ACT ARE TRULY TRIVIAL. HOWEVER, IN THE WORLD OF THE HELSINKI PROCESS AND IN THE COURT OF WORLD PUBLIC OPINION, THE UNITED STATES IS HELD TO A HIGHER STANDARD OF CONDUCT.

WE CAN AND WE MUST BE ABLE TO SERVE AS AN EXAMPLE TO THE WORLD OF COMPLIANCE WITH THE HELSINKI FINAL ACT. TO THAT END, WE MUST EXAMINE WITH CARE THOSE AREAS IN WHICH WE CAN PERHAPS DO A BETTER JOB OF MEETING OUR OBLIGATIONS. THIS IS ONE OF THOSE AREAS.

THERE ARE JUSTIFIABLE CONCERNS OVER PROPOSALS TO REPEAL OR AMEND SECTIONS 212(A)(27), (28), AND (29). ONE ARGUMENT IS THAT MANY OF THE PEOPLE EXCLUDED FROM THE UNITED STATES UNDER THESE SECTIONS ARE A REAL THREAT TO OUR NATIONAL SECURITY. MOREOVER, BECAUSE OF THE MAGNITUDE OF THE TASK FACING OUR DOMESTIC AND FOREIGN COUNTERINTELLIGENCE EFFORTS, WE MAY NOT BE ABLE TO ASSEMBLE CONCRETE EVIDENCE OF TERRORIST OR ESPIONAGE ACTIVITY BY PEOPLE WHO ARE, IN FACT, TERRORISTS OR SPIES AND WHO ARE SEEKING ENTRY INTO THE UNITED STATES. THEREFORE, THE BROADER PROVISIONS OF THESE SECTIONS WHICH ARE

UNDER ATTACK PRECISELY ON THE GROUNDS THAT THEY ARE OVERBROAD AND VAGUE MAY, IN FACT, SERVE A VITAL AND NECESSARY NATIONAL SECURITY PURPOSE.

THIS MORNING, I HOPE OUR DISTINGUISHED WITNESSES WILL BE ABLE TO GUIDE US BETWEEN THE CONTENDING INTERESTS, ALL OF WHICH ARE SERIOUS AND LEGITIMATE, WHICH ARE CONCERNED ABOUT THIS ISSUE. MUCH STUDY AND THOUGHT HAS BEEN GIVEN TO CHANGES WHICH COULD BE MADE TO THESE SECTIONS OF THE MCCARRAN-WALTER ACT. I LOOK FORWARD TO LEARNING THE VIEWS OF THOSE WHO HAVE TAKEN PRINCIPAL ROLES IN THIS DEBATE. I AM CONFIDENT THAT OUR REVIEW OF THIS ISSUE CAN MAKE A MEANINGFUL CONTRIBUTION TO ITS POSITIVE RESOLUTION.

UNFORTUNATELY, I HAVE A COMMITTEE HEARING I MUST ATTEND WHICH CONFLICTS DIRECTLY WITH THIS COMMISSION HEARING. ACCORDINGLY, I WILL TURN THE GAVEL OVER TO MY CO-CHAIRMAN, STENY HOYER, THE DISTINGUISHED CONGRESSMAN FROM MARYLAND. I REGRET THAT I AM NOT ABLE TO REMAIN TO TAKE PART IN WHAT IS LIKELY TO BE A VIGOROUS, WELL-INFORMED, AND SPIRITED DISCUSSION OF THIS ISSUE. MY COLLEAGUES ON THIS PANEL WILL, I AM CERTAIN, DO FULL JUSTICE TO THIS MATTER IN MY ABSENCE.

Chairman D'AMATO. I know that my Cochairman, Congressman Hoyer, has a statement to make as does Senator Wallop. So, let me now turn to Congressman Hoyer.

Cochairman HOYER. Thank you, Mr. Chairman. I appreciate your statement and your chairing of this hearing.

I became especially interested in this issue when Farley Mowat, the Canadian author, was turned away last year by U.S. Immigration officers before he boarded a plane in Toronto to conduct a promotion tour in the United States for his latest book.

This happened, ironically, right before you, Mr. Chairman, led a delegation to the Human Rights Experts' Meeting in Ottawa.

The Mowat incident was widely publicized. Mowat, who is the author of the acclaimed "Never Cry Wolf," was excludable on ideological grounds from entry to the United States under the 1952 McCarran Act that we are holding hearings on today.

The grounds for Mowat's exclusion were highly questionable, in my opinion. Moreover, the timing was unfortunate. The United States was meeting with 34 other nations in Ottawa to discuss human rights, among which were freedom of thought, conscience, and belief.

As you know, at the Ottawa meeting, both in our bilateral meetings with the Soviet delegation as well as in private conversations with other delegations, the McCarran-Walter Act was repeatedly cited as an example of U.S. noncompliance with the Helsinki Final Act.

The problem is presented as a U.S. policy of denying visas to certain controversial foreign visitors who wish to express ideas. Rightly or wrongly, McCarran-Walter is viewed as censorship.

So, Mr. Chairman, I want to thank you for agreeing to hold this hearing at this time. I do believe that it is an important issue, and not just from the Commission's perspective. The Commission's mandate to monitor compliance with the Final Act is not restricted to foreign signatories. It encompasses domestic compliance, as well.

By this hearing we are honoring the U.S. obligation to examine our own record. The willingness to review our performance publicly in light of domestic or foreign criticism is one of the greatest strengths of our democracy. We do not consider foreign criticism to be interference in our internal affairs.

I think also that this hearing, Mr. Chairman, demonstrates the seriousness with which we view the commitments undertaken 10 years ago in Helsinki.

We can anticipate that the United States will again be criticized for McCarran-Walter at the upcoming Human Contacts Meeting in Bern.

We have called this timely hearing to revisit the issue of excluding individuals from entry to the United States on the grounds of political ideology or affiliation.

We are concerned with examining how the U.S. implementation record on Helsinki provisions dealing with the free flow of people is affected by U.S. visa laws and their application. Have we progressed since the Commission's last hearing on this subject 7 years ago?

There is no question, U.S. officials should have the authority, in my opinion, to prevent someone coming into our country to commit sabotage or to engage in terrorist acts.

I have little doubt that the staff which is entrusted with administering our visa laws—laws which Congress has made—are conscientious, dedicated public servants. In fact, during previous hearings this has been testified to by groups who oppose the scope of current laws.

The problem then, as I see it, is this: Are the grounds for exclusion too broad and vague? Do they not encourage in some instances denials of entry that, in fact, are not warranted, even accepting certain agreed-upon objectives?

It is a serious problem, Mr. Chairman, when individuals such as Mrs. Allende, Farley Mowat, or Angel Rama, who is a literary essayist and scholar of Latin American literature, a recipient of the Guggenheim Fellowship and a fellowship from the Woodrow Wilson Center, and a tenured professor at the University of Maryland, are denied entry and opportunity for residence under section (28). I think we do a disservice not just to these individuals but to ourselves as well.

I am very pleased that we are having these hearings. I recognize the questions that I have raised are not easy questions. But in all fairness, they are questions that have been around for many years.

It becomes necessary to reconsider policies established years ago in light of experience, current standards and U.S. commitments under international agreements. The current mood, as I read it, is that the time has come to modify certain provisions of the Immigration Nationality Act. Perhaps we have studied it enough.

Mr. Chairman, I am particularly pleased that you and Senator Wallop are here at this hearing and that Congressman Barney Frank, our colleague from Massachusetts, has agreed to testify.

As you know, he is the chairman of the Government Operations Subcommittee that is reviewing this particular matter, and he is the author of legislation dealing with this matter.

Thank you for this opportunity.

Chairman D'AMATO. Senator Wallop.

STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Senator WALLOP. Thank you, Mr. Chairman and Congressman Hoyer.

We meet here today to discuss the relevance of the Helsinki Final Act to various provisions of U.S. immigration and visa law, including the law known as the McCarran-Walter Act.

That law involves those provisions of U.S. immigration law which bar the entrance into the United States of members of certain proscribed organizations, including Communist parties, without a special waiver, bar the entrance into the United States of persons who would engage in activities which would be prejudicial to the public interest or endanger the welfare, safety, or security of the United States, bar the entry of persons who seek to enter the United States to engage in activities prohibited by law relating to espionage, sabotage, public disorder, or in any other activity subversive to the national security of the United States, bar the entrance of persons who seek to enter the United States to engage in activities aiming at overthrowing the Government of the United States by force, violence, or other unconstitutional means.

It has been said that few single issues concerning U.S. compliance with Helsinki accords have received more criticism than the application of these laws to persons from the Soviet Union and East bloc CSCE states. That seems to me to be an overstatement of the obvious.

Isn't it typical of Soviet foreign policy to use the Helsinki accords to criticize our laws which limit their opportunities to work against us?

At the Bern Human Contacts Review Meeting this coming April, the Soviets and their friends are expected to use certain provisions of the Helsinki accords to attack the United States' defense of itself against their espionage and intelligence penetration operations in the United States by claiming that these defenses, as embodied in such laws as the McCarran-Walter Act, are contrary to the letter and spirit of the Helsinki Final Act, another example of the most absurd Soviet hypocrisy.

At today's hearing we are supposed to discuss the subject of our protective anti-espionage laws in advance of expected Soviet and East bloc criticism of our longstanding visa policies at the upcoming Bern meeting.

Ladies and gentlemen, I am appalled that the U.S. Helsinki Commission feels it necessary to put U.S. national security law up for discussion in a hearing of this kind.

Is this some misdirected attempt to apologize to or explain to the Soviet Union and its East bloc CSCE states the rationale for United States laws designed to protect this country from Communists, terrorists, spies, saboteurs, and their ilk?

Some of the topics due for airing in this hearing play directly into the hands of the Soviet deception and disinformation planners.

If information provided in today's hearing is exploited by the Soviets, and you can be sure it will be, that will be one further demonstration of the questionable nature of some elements of the Helsinki process.

That process was not designed to provide an open invitation to the Soviet bloc to mount criticism against the United States for its self-protective national security-minded immigration and visa laws.

I urge today's witnesses to bear in mind that their testimony may well be twisted by Moscow and come back to bite us at Bern.

Ladies and gentlemen, I hope we will refrain from self-flagellation here today. Let's not engage in a mea culpa exercise which will be picked up and exploited by the propaganda organs of the Soviet empire, courtesy of the U.S. Congress.

I hope that the State Department witnesses will not be asked to justify their proper administration of the laws of the United States by keeping out would-be or well-known enemies of the country.

I hope we shall ask those witnesses instead to tell us some details about the violation of diplomatic immunity and consular privilege inflicted on the United States and Western personnel behind the Iron Curtain.

I hope we might ask them what they intend to do about Soviet attempts to edit ABC.

I hope we ask them why it is that we cannot have somebody like Arnold Fleishman, who is a journalist of credible repute, not be permitted to enter the Soviet Union.

But I suspect I know what we are going to ask.

I would like to hear their views on what Soviet human contacts or immigration rules governed the shooting down of the Korean Air Lines airplane, or the murder of Major Nicholson.

I would like to know how they feel when they witness first hand the human rights abuses of the U.S.S.R. and its friends who shoot innocent persons daily along the Berlin Wall.

Shouldn't we be asking them how many Communist spies, saboteurs, and terrorists still slip through the loopholes of U.S. law, despite their dedicated efforts to prevent it?

Why are we not discussing Soviet and East bloc policies on visas and immigration?

If we want to talk about human contacts under the Helsinki Final Act, why are we not focusing on Communist abuses of international law and the Human Rights Convention?

I would also like to ask what any Helsinki Commissioners feel about Soviet immigration restraints, to say nothing of their emigration restraints.

Ladies and gentlemen, I know that we are also going to consider some proposed changes in U.S. immigration and visa laws that relate to the Helsinki Final Act. The Commission's study indicates that the proposed changes are commendable because, and I quote:

> Such a legislative change would make it considerably more convenient for citizens from several CSCE states to visit the United States. It would be a striking example of U.S. good faith efforts to improve compliance with the letter and spirit of the Final Act.

I must say that the United States of America cannot afford to be in the business of making it more convenient for Communists, spies, and terrorists to enter our country.

We must preserve the sections of our laws which protect our national security from all types of subversion. At the same time, we Helsinki Commissioners should provide support to our colleagues in Congress who are considering legislation to improve the opportunity for entry into the United States for the pathetic victims of Communist repression in the East bloc and elsewhere, such as labor leaders, dissidents, religious figures, and human rights activists who are forced by their systems to pay lip service to communism.

I would ask my colleagues who are members of the congressional committees which bear responsibility for the review of proposals to improve U.S. visa laws to consider the interaction of those laws with Helsinki accords.

Specifically, I would like to know why the Congress has not insisted that the State Department enforce the provisions of the United States Codes which permit the Secretary of State to deny visas to certain categories of persons from the U.S.S.R. and East bloc whose Governments have not improved their human rights records.

Congressional insistence on the enforcement of those provisions of current law would give the United States some leverage over the Soviet Union and the East bloc in their blatant and ongoing violations of the human rights provisions of the Helsinki Final Act.

We on the Helsinki Commission must do all we can to advance the cause of human rights for the victims of Communist oppres-

sion. At the same time we must do all we can to protect the United States from terrorism and subversion.

This is a delicate balance, I know, and it is one which does not concern the Soviet Union in the slightest. A country which seeks to edit ABC or to limit the access of journalists is one which does not care what this hearing does, except provide them with the opportunity to flagellate us on the world stage.

You give, in this hearing, the Soviets their argument and somehow or another, when confronted by vast evil, we appear to assume that it behooves us to call ourselves just a little bit evil if only to appear credible. And I think it is a dreadful mistake, Mr. Chairman.

Chairman D'AMATO. Thank you, Senator Wallop.

Before I turn the hearing over to Congressman Hoyer, because I have another hearing I must attend that is taking place now, it seems to me the Soviets regularly keep our citizens from visiting the Soviet Union. They have denied Members of Congress the opportunity to visit the Soviet Union, and restrict them when they are allowed in to such an extent that in many cases their visits are almost meaningless. In the case of this Senator in 1984, Soviet authorities waited really until the last hour before—and they do it in a very clever way—indicating to me that there had been no action on my request to visit the Soviet Union.

So, I have to share with my fellow Commissioner the fact that we have little, if anything, to apologize for. I understand this is a delicate balance.

I feel very strongly that the Soviets, on the other hand, really have deliberately created a shameful situation by the manner in which they treat both those who wish to emigrate and those who wish to visit. This Senator really can give you firsthand testimony as to his own treatment when he made a request to visit the Soviet Union.

I don't know whether I pose any threat to their security. I certainly wasn't looking to smuggle someone out, although I don't think you could be accused of some evil by helping some poor soul who has no place and who is a noncitizen, whose rights have been abused. So, I share very strong feelings with respect to a one-sided view of participation in the Helsinki accords.

Having said that, I am going to ask my colleague, Cochairman Hoyer to takeover. I turn the gavel over to him so that he may hear our distinguished first witness, Representative Frank from Massachusetts. Let me welcome the Representative. Mr. Frank, it is good to see you.

Cochairman HOYER. Thank you.

Mr. Frank, you may proceed.

STATEMENT OF HON. BARNEY FRANK, U.S. HOUSE OF REPRESENTATIVES

Mr. FRANK. Thank you, Senator. I hope I am at the right hearing. As I mentioned to Senator Wallop, he appeared to be discussing a subject which I did not understand to be the subject of today's hearing. I apologize in advance.

I think it is very important that we continue to maintain safeguards against espionage and sabotage, and if a hearing were to be called on that subject, I would be glad to come to it. I did not realize that that is what he had in mind and I apologize if I have misunderstood. Or it may just be that my initiation into the folkways of the U.S. Senate is still incomplete, and I appreciate this further grounding in it.

I do want to begin by referring specifically to Senator Wallop's suggestion, though, that it is somehow improper for us to talk about things that we don't like about our own public policy because the Russians might misuse that.

I think you do the Russians an enormous service that they are not entitled to have done for them, to let them interfere with one of the great glories of America, which is free and open democratic debate.

The fact that the Soviets would like to misuse the things that we say in our pursuit of democracy ought to be irrelevant to us.

No one doubts for 1 minute that by every relevant criterion in the Helsinki Agreement we are enormously morally superior to the Soviet system. One element of that superiority is our willingness to discuss for ourselves how we can get better.

And as the chairman of this Commission on the House remembers, because he participated, on the first day of this congressional session, many of us on the House side participated in a special order urging the Soviet Union to stop its terrible oppression of Andrei Sakharov, one of the heroes of our time. And by coincidence, that was also the day in which many of us participated in a special order commemorating the memory of Martin Luther King, and several of us drew the parallel and the contrast, in fact, between these two great men, each of whom decided to try and improve his own society and looked at the very real difference in the way in which the societies have reacted, the open society of this country, responding not always happily to criticism but listening to it, trying to use the criticism as a way to improve, and the terrible oppressive system of the Soviet Union of clamping down and oppressing Dr. Sakharov.

So, I don't for 1 minute think anybody in this Congress, if you look at the volume of criticism, if you look at the resolutions that are passed, none of us have forgotten which is the morally superior system.

But to allow the existence of the Soviet propaganda machine to impinge in any way on our continuing desire to give ourselves the fruits of democracy would be a terrible mistake.

I think the questions Senator Wallop says he wants to have the State Department asked, are good questions. Maybe he will come back and ask them. I would encourage him to do that.

Now I would like to talk about what I thought the subject of this hearing was, which is a law on the books of the United States which acts as if we are afraid of people who have different opinions than us.

Senator Wallop said one of the things we ought to be doing is making it easier for dissidents from the East bloc countries to come over here. Well, most of the examples that I have come across of people being prevented from coming to the United States haven't

dealt with East bloc nations. That is why I said I didn't quite understand the thrust of the Senator's comments.

No one has suggested to me that Hortensia Allende, the widow of a former president of Chile, was coming over here to engage in espionage, nor had Chile slipped behind the East bloc the last time I saw it, either politically or geographically.

Farley Mowat seems to me an unlikely candidate for any intelligence service anywhere in the world to entrust with any mission whatsoever, because he would not keep it quiet for 1½ minutes.

Gabriel Garcia Marquez, the list goes on.

Nor do I think when this administration banned Ian Paisley from coming here—now, Ian Paisley is one of the great bigots of our time, and it seems to me that the American people who want to listen to a great bigot ought to have that right under our Constitution, to listen to a great bigot. And when they banned Ian Paisley from coming over here, as they did at one point, or even Roberto D'Abuisson, I don't think either of those men were coming over here to engage in espionage on behalf of the East bloc. If they were, it would have been one of the great intelligence coups of our time, and I would look forward to reading John Le Carre's exposition of that at a later date.

But let me talk about a dissident from the Soviet Union, the Soviet bloc.

There is a man named Leszek Kolakowski, who I think is now in his 80's. He was recently awarded the Jefferson lectureship, as an example. He is one of the leading intellectual critics of communism.

Professor Kolakowski—and I am reading here from the testimony that Jeri Laber, who does excellent work as executive director of the Helsinki Watch, gave to us:

> Professor Kolakowski was expelled from the University of Poland by Communist Party officials and left Poland in disfavor in 1968. He is a member of KOR, the group of intellectuals who served as advisors to Solidarity, and has been their official representative abroad.

Leszek Kolakowski is one of the victims of the McCarran-Walter Act. He is one of the most distinguished critics of the Communist system as it is practiced in the world. Here is what he says in May of 1984:

> Every time when I apply for a U.S. visa, which happens of course very often, and I should stress that it has never been refused to me, I have to fill a form asking me, among other things, whether I have ever been a prostitute, a drug smuggler or a member of a communist party. Once I say yes—I do belong to the last category, former communist—I get another form in which I have to specify my crimes. Until recently, it included all my addresses since I was 16 years old. But in the last couple of years this question was omitted.
>
> The consular officials in London, or wherever it might be, have to get a waiver from immigration authorities in Washington. Then I have to reappear again in the consulate some weeks later and eventually I get the visa. The consulate is a very crowded one. I have to wait many hours before being admitted to the counter. The officers can't do anything about it, it is the law.
>
> I never get the multiple reentry visa, even though I am a regular professor at the University of Chicago.

It goes on.

One of the most distinguished opponents of communism in the world is subjected to a lot of bureaucratic delay and harassment under this law, one of the reasons why we ought to change it.

What the law basically does is to give the Secretary of State and the Attorney General the right to censor conversations with Americans on the part of people who Americans want to listen to.

I am not talking here about the rights of non-Americans. I am talking about the rights of Americans to have people come here and engage in discussion.

There are, by the way, five different categories of exclusion for mental illness. I think if you had a nervous breakdown from which you are completely recovered 12 years ago, you are legally excludable under this very badly drafted act.

But in particular I find offensive, in section 27—

> * * * an alien who the consular officer or the Attorney General knows or has reason to believe seeks to enter the United States solely, principally or incidentally to engage in activities which would be prejudicial to the public interest or endanger the welfare or security.

This law says that the Attorney General can keep someone out if an incidental purpose of that person coming here is to "be prejudicial to the public interest."

I had hoped that there was no official discussion and certainly not an official version of the public interest. I am not talking now about sabotage, espionage, crimes. People who are going to engage in those ought to be excluded.

But I think having the Attorney General have the general power to keep someone out of here who incidentally might take actions prejudicial to the public interest is the kind of official censorship that this Federal Government ought not to have over its citizens.

And when Farley Mowat is kept out and Ian Paisley—why was Ian Paisley kept out? Because, at the time he wanted to come, the American Government found it inconvenient for him to discuss his politics with Americans who wanted to listen to him.

Who is kidding whom? No one thinks he was going to engage in sabotage, espionage, or anything else. No one thought Hortensia Allende was going to do anything other than articulate a view of American foreign policy which the State Department didn't like. And that is unbecoming.

I have got an alternative draft. It is not a draft that is perfect and it is a complex area and I would hope that we would be able to participate in making it tougher.

But under my bill we would exclude people who had significant infectious diseases, people who because of mental incapacity were going to be a danger to themselves or other people or a total burden, people who we had reason to believe were going to engage in criminal activity.

And I am not asking that we prove beyond a reasonable doubt that that would happen. We are talking about some reason to believe and then keep them out.

What I want to drop are these general charges to the leadership of this country to say, we don't like your opinion and you are staying out of here, we don't like what you say. And that is the reason that Hortensia Allende was kept out, it was the reason that D'Abuisson and Paisley were kept out. It is a left and a right thing. Members of the French Government were kept out.

They used to have a list to keep out Canadians. One of the people on the list was a guy named Trudeau. I was asked once how you

got off that list, and I said, well, I know that one way to get off the list is to get elected Prime Minister of Canada. Now, whether there are other ways, I am not sure.

You ought not to have to get elected Prime Minister to be kept off the list.

Now, let me make a bipartisan remark. The last President who had a decent record on this was Harry Truman, who vetoed the foolish piece of legislation, as it should have been vetoed. But every President since then has yielded to the temptation.

Well, this person is going to come over here and give a speech and embarrass me, I don't want to see this person being critical of me, let's keep him out. And then we are told, but we are not keeping out the ideas, we are just keeping out the people, they can send their ideas in by mail.

It is no part of the business of the Government of the United States to dictate to American citizens the terms in which they will engage in political dialog.

If somebody wants Farley Mowat to come over here and engage in the particular kind of rhetoric that he engages in, that is their business.

If someone wants to listen to Ian Paisley say outrageous things about the Pope, then they ought to be able to hear him say that.

If they want to listen to Garcia Marquez or Carlos Fuentes or any of these other people, they ought to be able to listen to them.

And I think we have to redraft this law, and I think it is a violation of the Helsinki accords and I think our moral superiority over the Soviet Union is very important. I hate to see even a smudge on our compliance with Helsinki, but I want to be honest with you, if there was no Helsinki accords, I think it would be an outrage for the Attorney General or the Secretary of State to be in a position of saying, if you come in here, your incidental activities will be prejudicial to my concept of the public interest, so I don't care how many Americans want to hear you, you can't come.

That is not the kind of country I want to live in and I don't want to give the impression to the world that we are afraid of anybody's ideas.

We have a strong and vigorous and self-improving democracy, and we ought to show to the world that we are the kind of place where you can come and talk and argue and fight and we will defend ourselves, and we don't need any Federal official to protect the American people from ideas, and we have a law on the books which now does that.

I have a redraft which would exclude people who have engaged in criminal activity, people who have engaged in terrorism against the United States, and it gives the benefit of the doubt to the officials to do that. But it excludes the kind of ideological things, and it has less to do with espionage than any other subject I can think of.

By the way, when they do want to send spies over here, they don't take controversial political figures and send them over here on lecture tours to do a little spying on the side. So, the notion that this has got anything to do with espionage is one of the more bizarre that I have heard. We are not talking here in any way, shape, or form about lessening the espionage things. And we are

not even talking about anybody who is covered by the diplomatic corps, because it has been pointed out to me by my staff and I have been reminded, the diplomatic corps isn't covered by this.

I thank you very much, Mr. Chairman.

Cochairman HOYER. Thank you, Mr. Frank, for your comments. I think it appropriate that I perhaps make a few comments of my own at this point in time.

There are, obviously, differences of opinion on the Commission. I must take issue with the implications of Senator Wallop's statement, although I know how strongly he feels, about the fact that anything that might come out at a hearing of this type could in fact be used and, in effect, changed or edited in some way to the Soviet's advantage temporarily.

To suggest that the Helsinki Commission, which is charged with responsibility of reviewing implementation of the Helsinki Final Act for all 35 signatory nations, which of course includes the United States should not review its own record, is a little bit like suggesting that Helsinki monitors in the Soviet Union should be criticized rightfully by Soviet officials for looking at any violations of the Helsinki Final Act in the Soviet Union, but should look only at violations perpetrated by the United States.

It seems to me that that logic is inevitable. If it is applicable to the Helsinki Commission in the United States, it would be equally applicable to the Helsinki monitors in the Soviet Union or any other Eastern bloc nation, Czechoslovakia, Poland, or Hungary and I think that is in error.

It seems to me the expression that you have made, Congressman, is one with which I agree 100 percent. The strength of this Nation has been, is now, and will continue to be, our ability in an open society to look at those areas where we may have shortcomings, and to correct those deficiencies that we see in our own society. At the same time, we have the ability to look at others while being in the position of saying that if we have shortcomings that you want to talk to us about, we are prepared to look at those, and you ought to be prepared to do the same.

To suggest otherwise, I think, is to undermine seriously this Nation's principles upon which our democratic society is premised.

Therefore, I obviously disagree with the sentiments of my colleague that this hearing is somehow inappropriate and gives some advantage to the Soviets.

Mr. FRANK. You could say that, by the way, if you took that viewpoint not just about this hearing but about the debates that go on daily in the U.S. House of Representatives and U.S. Senate. It is a strength that we are free to talk about ourselves this way.

Cochairman HOYER. You are absolutely right. We could suggest that anytime that anyone raises a shortcoming in our society, whether it deals with civil or human rights, or whether it deals with economic policies or whatever, that such give some advantage to the Soviets.

Let me ask a couple of specific questions. You have been holding hearings now in your subcommittee—or have hearings been scheduled on it?

Mr. FRANK. The Immigration Subcommittee, on which I serve, under Chairman Mazzoli, did have one set of hearings on this

issue, and it has been discussed at some other sessions that we have had.

Cochairman HOYER. What cooperation are you getting from INS at this point in time?

Mr. FRANK. Well, at two levels. First, I have to say that since this has surfaced as an issue, and particularly with the activity of poets, essayists, editors, and novelists [PEN], which is the organization that does very good work in criticizing the human rights violations in the Eastern bloc and elsewhere. It isn't just America and the Soviet Union that we are talking about. There are violations by right wing regimes, as well as by the Soviet bloc, of people's human rights.

PEN has, along with its other work, talked about this, because writers are more often victims of this exclusion than anybody else, because they have written down what they think, so, it is easier for the censors to keep them out.

And I have to say that since we have sponsored the bill, since people like yourself have cosponsored it and we have shown some interest in this, people like Senator Simon on the other side have shown some interest in it, the administration of this act has improved some.

It is not being used as rigidly and as exclusively and as antidemocratically as it used to be, and I commend the State Department and the INS for improving.

I was told informally by one State Department official a couple of years ago that several Cuban chefs had applied for a visa and the initial response was to turn them down, and he said he did not want to have to come up to Congress and defend the proposition that we were making America safe from an invasion of Cuban chefs and would he please allow them in and spare him that indignity, and they were allowed in.

So, we have gotten cooperation in that regard. And they testified about what they thought about some.

For instance, there are some exclusions in here dealing with other than ideological reasons. The Reagan administration has said that it does not think that the current exclusion of people based on homosexuality ought to be maintained. My bill would repeat that exclusion. I don't think the INS ought to be doing bed checks and the Reagan administration agrees and they don't think that exclusion should be there.

On the other hand, when we get to the question of the administration of the ideological exclusions, we get from them a denial of what has happened. They tell us they don't keep anybody out for their opinions.

Anybody who believes that Hortensia Allende was not kept out for her opinion, is smoking something, for which you could be kept out for smoking it.

And what we do, when we ask them the question, well, why did you keep out Mrs. Allende or this one or that one, they say, we can't answer you because it is under litigation.

Now, you, as a lawyer, know that is one of the great lawyer's dodge of all times. What that means is, I find it inconvenient to talk about that, so, I am going to invoke the fact it is under litiga-

tion, because the people who say that, feel free to talk about things that are under litigation if they want to talk about them.

So, we don't get much in the way of specifics. We have gotten from them an improvement in the way they administer it.

Secretary Shultz recently spoke before PEN and he described the administration of this in a very nice way, and if in fact what Secretary Shultz has said was an accurate representation of the way in which they administer this law, I wouldn't be quite so concerned about it.

The relationship between what he said and what in fact has been the history was tangential, at best.

Cochairman HOYER. Let me just make the comment that unfortunately INS is not going to be here this morning. I am not sure exactly what the reasons are, but it is unfortunate that they chose not to appear today, after notice was given to them, because I would have been interested in their comments.

Mr. FRANK. Could I just say, one of the problems we have here in the way this was drafted, it is the perfect bureaucratic buckpass, because the authority is divided so neatly between the Justice Department and the State Department, between INS and the consular offices, that you could spend 5 or 6 months trying to get one of them to own up to it, and it never happens. It is always the other guy's fault.

It is like sitting in the old barberchair with mirrors on both sides, and you will get dizzy trying to figure out who is really what, long before they will tell you who made what decision.

Cochairman HOYER. Let me ask you a specific question. As I understand it, there are exceptions to the McGovern amendment's mandatory waiver provisions, such as for Communist labor officials, members of the Palestine Liberation Organization, and leaders of Communist parties from non-Communist nations.

What effect will your legislation have on these?

Mr. FRANK. Let me say first, the McGovern amendment, I think Senator McGovern did an excellent job, but it hasn't meant very much, that exception, because they have found a way around it.

What the McGovern amendment says is that the Secretary of State has to make a recommendation to the Attorney General that certain things be waived. They have now interpreted that as being purely a recommendation, and we have had cases where the Secretary of State, under the McGovern amendment, has made the mandatory recommendation that this exclusion be waived and the Attorney General has said, thanks very much, Secretary of State, I honestly disagree with you and I am not going to do it. And there is no evidence of any Secretary of State being offended that his recommendation was refused.

That is, it has been a collusive rejection.

Second, I do want to say that with regard to bringing over officials of Communist parties, there is an entity in this country which has on a regular and consistent basis not only brought over Communist leaders but has given them—guaranteed them access to the media and engaged in great praise of them. It is called the Government of the United States of America.

I mean, Ronald Reagan in the last 5 years has brought over here and entertained and presented to us a lot of very important Com-

munists. So, we should understand what this all says. It says only the officials of the U.S. Government can bring over important Communists. If some private citizen wants to bring one over, that is considered to be a bad thing. But if the President wants Deng Chou Ping or if the President wants somebody else, over they come and, in fact, they not only get a good time, they probably go away with a few bucks.

Now, as far as my amendment is concerned, my amendment would exclude some of the people you talk about and not others, based on their behavior.

For instance, you asked about the PLO. There is language in here which says that you can be kept out if—and this is an absolute category of exclusion—you have engaged in terrorism.

Cochairman HOYER. That would speak to the concern expressed by Senator Wallop.

Mr. FRANK. Yes; this would keep out terrorism. Anybody who was engaged in terrorism against American citizens.

The term, "terrorist activity"—I am reading from page 19 of the draft—"means organizing, abetting or participating in a wanton or indiscriminate act of violence with extreme indifference to the risk of causing death or serious bodily injury to individuals not taking part in armed hostilities."

And there are two separate places here, one as a grounds for exclusion, another as a grounds for deporting someone, because we also pick up the language that says if someone slipped in and you find out about him, you can then deport him.

You are excludable if you have engaged in terrorism, and here it is on page 4:

"Any alien who has engaged in a terrorist activity"—as defined as I just read it—"directed against the United States or a citizen of the United States is excludable."

Now, people said, why just against the United States? Well, if you read my definition of terrorism, somebody might decide that they could exclude Jonas Savimbi, and I didn't want to necessarily impinge on the administration in that regard.

But the PLO, I agree with the administration's position that Abu Abbas, a high ranking official of Yassir Arafat, is guilty of organizing the *Achille Lauro* terrorism, and anybody like Abbas and Arafat, his boss, would be excludable because that clearly is covered by the definition.

If you are talking now about someone who merely has membership in an organization, who has an ideological position and has never engaged in organizing, abetting, or committing terrorism, yes, I want to be very clear, I think it is a good thing for Americans to allow people to come here to talk, who have rotten ideas.

I mean, I think that—as I said, Ian Paisley seems to me a very offensive figure, but I disagree with the notion that the law should allow him to be excluded, and I would say the same about others.

But as far as the PLO leadership is concerned, they would be excluded.

As far as a Communist labor leader, it would depend on the circumstances. I think in most cases they would be allowed in, and I would hope that they would be allowed in and be subject to the

very vigorous process of debate here and we would benefit from those debates.

Cochairman HOYER. Thank you. Again, I appreciate very much your being with us and your leadership in this area and look forward to working with you on it.

Mr. FRANK. Thank you, Mr. Chairman. I want to say, I admire your willingness to take on this very important job of seeing that we live up to the Helsinki Commission, and I am particularly impressed by your willingness to serve as cochairman with all these Senators. I think that shows a dedication to duty above and beyond the call.

Cochairman HOYER. Their willingness to serve with me as cochairman is another question, but I appreciate your comments.

At this time I would like to call on my good friend and a leader in the Congress of the United States, a gentleman who served a long and distinguished career first in State government, then in the House of Representatives. He was recently demoted to the Senate of the United States, where he is serving with distinction from the State of Illinois. He is, from my perspective, one of the most thoughtful and sensitive leading Members of the Congress of the United States. The Commission is very honored to have Senator Paul Simon from Illinois with it today.

I appreciate very much, Senator, your agreeing to come back across the avenue to be with us today.

STATEMENT OF HON. PAUL SIMON, U.S. SENATOR FROM ILLINOIS

Senator SIMON. I am honored to be here. You failed to mention the main plus I have in my background. I once served in the House with Steny Hoyer and I am pleased to be here, and I was on this Helsinki Commission for some years.

Cochairman HOYER. I know that.

Senator SIMON. Let me just underscore what Barney Frank has said.

I served in the Army in Germany for awhile. I had a weekend leave and went to England. I was in London in Hyde Park, where everybody gets up and, no matter what your religious views or political views and everything, and I remember this Communist leader standing with maybe 20 people around and he was haranguing, and this little lady with a cockney accent says, why can't we speak in Moscow like you are speaking in London? And everyone laughed. And it was the essence of the difference in our systems.

Why we should embarrass ourselves by having on the statutes—it is not only the phrase that Barney Frank says, prejudicial to the public interest, whatever that means, you exclude people on that basis, but also differing political philosophies.

Now, I think the Attorney General might very well exclude me and you, frankly, because we have little differing political philosophies from the Attorney General of the United States.

I just think that it does not make sense. This past year 32,218 visitors were deemed excludable, and of that number 31,527 eventually got approved.

So, what you did was, you embarrassed the United States with 31,000 people needlessly. For what purpose? It just does not make

sense. And the people excluded, Barney Frank already mentioned Leszek Kolakowski.

He is going to be delivering the big humanities lecture right here in Washington--receives $10,000 for that lecture. But he goes through this needless embarrassment all the time.

And you know what the INS officials tell him when he fills out the form, they used to say, just lie, tell them you weren't—don't mention that you were a Communist one time. But because he is honest he has to go through this needless kind of a thing.

Graham Greene has been excluded, Farley Mowat—Why is Farley Mowat excluded? Because he protested B-52's flying over some timbered land that he owns up in Canada. You know, that just doesn't make sense.

He mentioned Mrs. Allende. What Barney Frank did not mention here was Mrs. Allende was invited by a Roman Catholic diocese to come and speak in the United States, and we thought it was too dangerous to let her come and speak. You know, that is ridiculous. That really does violate the Helsinki accords.

Nino Posti, former NATO general from Italy, denied admission to the United States. Pierre Trudeau has already been talked about.

Now, again, I would like to make clear, Barney Frank and I want to exclude people for sabotage, espionage, terrorism, and criminal activity. There is no question about those things.

But to exclude people because of their political beliefs is simply not the tradition of this country.

I had an amendment in the Senate, and in fact I have it in the bill that I will be introducing over there right now, which simply says, "* * * no one may be denied a temporary visa because of his or her political beliefs."

I think that is what this country stands for. I brought it up as an amendment to the immigration bill, and, frankly, I lost. I lost almost 2 to 1 in the Senate on that. But one of the reasons I lost, we have a Republican table and a Democratic table. You go down and you read the summary of the amendment, and the Republican summary of my amendment said, "The Simon amendment wants to admit anarchists and Communists to the United States."

Well, that is not exactly an accurate description of my amendment. What I want us to do is to live up to the ideals that we profess in the Helsinki accords.

Let the Soviets not live up to it. You know, that is more of a tradition for them. It is not our tradition.

Our tradition is one of free speech and I hate to see us moving away from that tradition.

Let me just mention one of the other things that is wrong about this whole thing. Someone who was very active in my campaign for the Senate contacted me and said I ought to back off of this. He said that this is one of these things that people can use against you.

Well, you know, I am old enough, much older than you, old enough to remember the McCarthy era, when people were backing off and were afraid to say this and afraid to say that.

We have to stand up. The American dream and the American system is this freedom to say whatever we like. Those soldiers right

in back of you walked through those streets and fought not for a piece of land but for an idea, and that idea is freedom, and I don't want to compromise that idea.

I would be happy to answer any questions you may have.

Cochairman HOYER. Thank you very much, Senator, for that excellent statement and for your leadership on this issue.

My experience has been that if there has been anybody who is prepared to stand up for ideas which may not be temporarily popular but which in the long term seem to express the ideals of this Nation, it seems to me that you have done that certainly as a Member of the House, as a member of this Commission, and now continue to do it in the Senate. I congratulate you for it.

Obviously, Senator Wallop has raised some questions—let me ask you a couple———

Senator SIMON. I was not here when Senator Wallop spoke, so I didn't hear that.

Cochairman HOYER. Senator Wallop's essential premise was that by holding these hearings and by asserting that there may be some deficiency in implementing the Final Act as it relates to the McCarran Act, that we were giving, in effect, aid and sustenance to the Soviets and to other critics of the United States. Presumably they might use the transcript of this hearing to imply that the United States was not itself complying with the Helsinki Final Act and thus not in any position to criticize the Soviets.

And I think probably his point would be, more importantly, that the Soviet violations are so egregious and so out of proportion with any shortcomings that we might have in this country, that it is a disservice not to focus on the Soviet and other Eastern bloc violations of the Helsinki Final Act rather than spend time looking at this.

Now, obviously, I do disagree with his thoughts.

You could comment on those, if you would.

Senator SIMON. Yes; I would like to make a comment on that. It is not the first time that Senator Wallop and I have disagreed, and I have great respect for him.

But that is the difference between the Soviet system and our system. You are not going to have any hearing in Moscow where Soviet citizens are going to come in and disagree and say the Soviet Union hasn't lived up to the Helsinki Agreements.

I am proud that we have that ability to do it, and I am not equating this violation of the Helsinki accords with the violations that they have. I hope the Soviet Union moves in the right direction. But I think, in a sense, we strengthen our own criticisms of the Soviet Union when we say, "You know, we are not claiming we are perfect, we have to improve here, we have to improve there."

I remember when I read the Helsinki accords, and I may be one of the few living Americans who has read the Helsinki accords, that I came across the provision that says the signatory powers agree to promote the teaching of foreign languages and the understanding of other cultures.

And, you know, there is no question, we have slipped in this country on teaching foreign languages. I made a speech at the Belgrade Conference on the Helsinki Agreement, where I said, "We

have slipped. We haven't done what we should according to this, but let me tell you what I think you ought to be doing."

I think I strengthened my hand in speaking to the Soviets and the other Warsaw Pact countries who were Helsinki signatories by candidly saying we haven't done everything perfectly.

Let me just add one other thing that is part of this. It is an experience that other people—you and I have seen other people go through. In fact, you and I were in the Soviet Union together on a trip together some years ago.

I had a member of my staff who went over to the Soviet Union. She had never been there and I had her visit some of the refuseniks and some of the other people. She came back the other day and said, "You know, it is a strange thing. I feel so patriotic now."

You come back with a feeling of pride in what the United States stands for, and I want us to continue to stand up for freedom and what is right.

Cochairman HOYER. I have a couple of questions here, Senator, but we will submit those later. We want to move on. I very much appreciate your coming over here and participating with us. I agree wholeheartedly with your comments.

Senator SIMON. And I thank you, and let me commend you. You have been a stellar Member of the House and you are continuing to do that. Not only Maryland, but the Nation is fortunate because we have your service. Thank you.

Cochairman HOYER. In anticipation of your last comments, I should have had you sworn as a witness. Thank you very much, Senator.

Our next witness is Mr. Michael Newlin, Deputy Assistant Secretary of State for Consular Affairs.

Secretary Newlin, on behalf of the Commission, I want to thank you very much for agreeing to appear with us this morning to give your thoughts and comments on the issues raised by the debate regarding the McCarran-Walter Act, its implementation and some of the issues that have been raised by both Congressman Frank and Senator Simon.

Senator Mathias, from my own State, as you know, has made a number of recent comments with respect to this act.

Please proceed any way you would like.

STATEMENT OF MICHAEL NEWLIN, DEPUTY ASSISTANT SECRETARY OF STATE FOR CONSULAR AFFAIRS

Mr. NEWLIN. Thank you very much, Mr. Chairman. I am very pleased to be here this morning to testify before the Commission and to state what the Department of State's actions are concerning visa practices and policies and to explain why the Department believes that these practices and policies are consonant with the principles of the 1975 Helsinki Conference Final Act.

Before I describe in detail for the Commission how the Department administers its statutory responsibilities under sections 212(a)(27), (28), and (29) of the Immigration and Nationality Act of 1952—the McCarran-Walter Act—I would like to underscore the following points which are central to the Commission's inquiry.

First, assertions that the United States denies nonimmigrant aliens the opportunity to visit this country solely for ideological reasons are misleading and wrong.

Except in the case of terrorists, members or affiliates of terrorist organizations, representatives of purported labor organizations in countries where such organizations are instruments of a totalitarian state, and, as has been brought out earlier, the PLO, nonimmigrant aliens are not denied entry to the United States because of their personal beliefs or affiliations.

Second, the Congress has on several occasions already carefully reviewed the issue of U.S. compliance with the Helsinki Final Act in the light of our immigration laws and has enacted specific legislation to assuage the concerns which you have under consideration today.

I refer, of course, to the McGovern amendment, 22 U.S. Code section 2691, that was enacted into law in 1977 and amended further in 1978 and 1979.

Third, we believe the available statistical data clearly belie the charge that the United States excludes nonimmigrant visas because of their political beliefs in contravention of the Helsinki principles.

Of the approximately 7 million nonimmigrant visa applications that the Department processed last year, we deny entry only to a handful of aliens on the basis of the sections you have under consideration today, sections (27), (28), and (29), and then only for national security or foreign policy reasons or because the alien is a representative or adherent of a specific group, like the PLO, or a Communist labor organization that Congress has expressly designated.

In a July 27, 1984, letter from Assistant Secretary of State Joan M. Clark to Congressman Mazzoli, Ms. Clark responded to charges that U.S. visa practices run afoul of the Helsinki Final Act.

She replied in the following terms:

> The Department believes that the phrase, exclusion on political and ideological grounds, is generally inappropriate. Of the many thousands ineligible for a visa on such statutory grounds, under section 212(a)(28)—the section barring persons because of Communist affiliations or belief—only a relative handful are actually excluded. A sizable proportion of those actually excluded are kept out because their personal beliefs include advocacy of terrorism.

That is, that falls under section 212(a)(28)(F).

> It is the Department's general practice not to recommend waivers of ineligibility for aliens who are ineligible because of their personal advocacy of terrorism.
>
> A waiver of ineligibility is routinely recommended for aliens ineligible under section 212(a)(28) solely because they are members or affiliates of Communist, anarchist or terrorist organizations. The only exception to this is when an alien is within one of the classes which the Congress has exempted by statute from the purview of the McGovern amendment.

As I mentioned earlier, representatives of labor organizations in Communist countries.

"The phrase, political and ideological grounds," does not apply to the small number of persons excluded under section 212(a)(27), which in its terms is not ideological. Individuals are excluded under this section of the law solely when it is determined that an alien's particular visit or specific proposed activities could have potentially serious adverse foreign relations consequences.

It is the Department's view that the position described above reflects a reasonable exercise of the authority under United States immigration law. We deny admission to aliens who either constitute a threat to this Nation's security or whose entry the Congress has expressly disapproved, and admit those who, while technically inadmissible, would not constitute such a threat. We do not believe such careful administration of the immigration law conflicts with the principles set forth in the Helsinki Final Act.

Mr. Chairman, I wish to reaffirm Ms. Clark's July 27, 1984, position to the Commission.

I also welcome the opportunity to clear up certain misperceptions concerning the alleged denial of visas solely because of a person's political belief or ideology.

In testimony by senior officials before congressional committees, we have taken pains to explain in detail how our visa system works in practice and to counter charges that our immigration laws are somehow in conflict with the Final Act.

In a recent speech, the Secretary of State made it clear that we do not deny visas solely on the basis of political affiliation or on ideological grounds.

Secretary Shultz on January 11 in a statement before the PEN international conference in New York said:

It has never been the approved policy of the United States to deny visas merely because the applicant wants to say that he disapproves of the United States or one of its policies. When a writer or artist seeks a visa for the purpose of speaking or lecturing or performing in the United States, the administration of the act now involves the strong presumption against denying visas for foreign policy reasons. No denial is ever based on a person's abstract beliefs. I want to make it clear, however, that we will deny personal access to people who aim to undermine our system through their actions, who are likely to engage in proscribed intelligence activities, or who raise funds or otherwise assist our enemies.

Clearly, Mr. Chairman, that portion of the Immigration and Nationality Act with the greatest relevance to the Helsinki accords is the section which bars, among others, members of any Communist organization and those who advocate world communism.

Since the adoption of the McGovern amendment in 1977, a consular officer or the Secretary of State is required to recommend waivers of ineligibility to the INS for persons whose sole ineligibility relates to membership in or affiliation with certain proscribed organizations.

This, I stress, is routine and thus facilitates the aim of cooperation in humanitarian and other fields under the Final Act.

There are, as I have mentioned earlier and as Mr. Frank and others have mentioned, certain exceptions which are mandated by Congress.

Of course, it is conceivable that an applicant could be ineligible not only under 212(a)(28) but also under 212(a) (27) or (29).

While all of us are in favor of freedom of expression and of facilitating contacts among different peoples, I do not believe it is prudent to advocate that the Government not have the ability to exclude persons whose presence or activities here, if admitted, would endanger the welfare, safety, or security of the United States.

Likewise, the Government requires the ability to exclude terrorists, saboteurs, or persons whose purpose is to engage in other subversive activities.

To sum up, Mr. Chairman, U.S. policy is to facilitate the movement of peoples regardless of their political beliefs, while retaining

the responsibility to exclude persons on security or foreign policy grounds.

We believe we are in full compliance with the provisions of the Final Act and do not believe that sections (27), (28), and (29) of the Immigration and Nationality Act, as presently applied, derogate in any way from such compliance.

In closing, Mr. Chairman, I would like to thank you for your gracious remarks, present company excepted, that U.S. officials applying this law try to do so in a conscientious and responsible manner.

Thank you, sir. And if there are any questions, I would be glad to respond.

Cochairman HOYER. Thank you, Mr. Newlin. I appreciate, as I said at the outset, your being here. I appreciate your statement. I think your statement certainly is an expression of a policy that would have a broad consensus behind it.

There is, obviously, a difference of opinion as to whether the conclusions of how the policy is being applied are in fact as you see them, and that goes, I suppose, without saying.

A number of examples were mentioned, Mr. Newlin, earlier today. I would appreciate your comments—you may have made them before, and I know the Secretary has spoken to them, but, for instance, Mr. Mowat from Canada. How was the act applied in that particular case consistent with the statement that you have just made?

I ask that for informational purpose, not in an argumentative way. What was the rationale as it relates to the statement you have just made?

Mr. NEWLIN. Mr. Chairman, in anticipation that Mr. Mowat might come up today, I asked the State Department to search our records.

We have no record that Mr. Farley Mowat has ever applied for a visa to enter the United States.

Now, Canadians in general, as you know, do not require visas. They are subject to a visa waiver. Nor is the State Department in the business of determining who is admissible.

We issue visas to those that require visas, and it is the Immigration and Naturalization Service that determines admissibility.

I am sorry, it is not for the purpose of evading this, but I am not in a position to state what the circumstance is because he has not applied for a visa.

If he were to apply, his application would be adjudicated in accordance with the relevant law, as amended.

Cochairman HOYER. I think certainly that is an accurate answer. INS is not here, so if we were going to ask anybody, you were the folks to ask. But I think, as Congressman Frank would say, the matter is under litigation in some other court, not mine, thank heavens.

How about Mrs. Allende?

Mr. NEWLIN. Well, Mr. Frank has sort of preempted my answer and here again, Mr. Chairman, it is not with any purpose of evasion or a willing attempt to evade a substantive response.

On the basis of legal counsel, I am obliged to state that this matter is sub judici at the present time and it would be inappropriate for me to comment on the circumstances.

I would like, however, to point out that Mrs. Allende recently applied for a visa. The grounds of admissibility were waived. I believe she came to the United States. So, that is something that I think should also be taken into account in the present administration of the act in accordance with the statement of the Secretary.

Cochairman HOYER. I don't know how many of these questions you may be able to answer, but in light of that response, would it be fair to assume that a determination was made that the factual situations were different? Or would counsel prefer that you didn't get into that, as well?

Mr. NEWLIN. Well, Mr. Chairman, each application is adjudicated on the basis of the facts and the circumstances at the present time. And it may be that Mr. Hergen, who is in the legal advisors office, would be able to shed some additional light on this.

Cochairman HOYER. Would you again give your name for the record?

Mr. HERGEN. Yes, sir; Jim Hergen, and I am the Assistant Legal Adviser for Consular Affairs.

I welcome this opportunity. I realize this is a very serious subject and I certainly don't want to turn this into a discussion of any particular case.

But I have been in this position for 3 years, the past 3 years, and I have observed it. I have personal knowledge of how it works.

One of the problems with the situation described by Congressman Frank and others is a confusion about what these various sections actually do, and the debate tends to get garbled.

In Mrs. Allende's case, there is certainly no problem discussing what the case is about generally. It is in litigation. The difficulty is that the executive—this was a denial for foreign policy reasons under section (27), prejudicial to the public interest.

Now, there are only a very small number of these type denials made every year, and it is important for people to understand, especially in the context of the Helsinki Act, that the decision in a case like this is made at the very highest level of the Department of State on an individual basis.

Now, in Mrs. Allende's case, for example, the Under Secretary of State for Political Affairs made a personal review of her case and issued to the court two affidavits.

One affidavit was an open court affidavit and explained as much as we felt we could tell publicly about our decision. I will be happy to make a copy of that available. There is no sense going into that now in detail.

But also we submitted to the court what is called an in-camera affidavit that related additional information that we did not feel we were able to make public.

In addition, we submitted another affidavit from an expert in normal visa practice that describes how this process works in minute detail, and we will be happy to make that available.

So, it is really not that anyone has refused to discuss the facts of the *Allende* case. It is just that we reached a certain point in the decisionmaking process where we felt we could not disclose publicly for the reasons that we had.

I really should take pains to emphasize that at least in my experience, for whatever it is worth to this Commission, having ob-

served the process closely, these decisions are not made by a bunch of troglodytes wearing green eyeshades in the basement of the State Department. These are made by the most senior foreign policymakers.

They are an awful lot of trouble to make. It is a very sophisticated, closely scrutinized process, and to be sure, it is possible that once in a while someone may make a poor judgment. But that is really what is at issue here.

The Under Secretary for Political Affairs in the *Allende* case made a judgment, and the Supreme Court recognized this in *Kleindienst* v. *Mandel*, that in certain cases senior officials have to make these important judgments.

Now, Congressman Frank and others disagree with these judgments. In the case of Mrs. Allende, for example, they say, well, as the good Senator Simon just said, well, you know, Mrs. Allende, a poor widow who was invited here to speak to the Roman Catholic Conference in Los Angeles, or wherever it was, was denied, and obviously that is an ideological or political exclusion.

Well, of course, we judged the case differently, rightly or wrongly. But it is not a frivolous decisionmaking process.

Does that answer some of your questions?

Cochairman HOYER. It addresses them. I am interested in maybe calling the troglodytes with the green shades on the bottom floor of the State Department to see what they do handle. The premise seemed to be that they existed.

I understand what you are saying, and I understand your premise, as Secretary Newlin's is, that these decisions are made in a considered way and are legitimate decisions pursuant to the tenets of the act.

Congressman Frank's and Senator Simon's, obviously, position is that the act itself has deficiencies and is too broad.

Let me ask you, when you respond that there are few numbers of cases, do you have, if not the exact number, a considered judgment of the magnitude of those kinds of judgments that we are talking about? How many cases would we be talking about?

Mr. NEWLIN. Well, I think there, Mr. Chairman, we would have to ask you for clarification. I think in the letter of invitation, your letter of invitation, Mr. Chairman, I think you referred to sections 212(a) (27) and (29).

Now, grounds of excludability are, of course, different in each of these sections.

Briefly, section (27) are activities prejudicial to the public interest or endanger the welfare, safety, or security of the United States.

Section (28) is this broader provision, anybody that is an anarchist or member or affiliate of any Communist party or organization, an advocate of world communism, and terrorists.

And section (29) are people that would engage in espionage, sabotage, or other subversive activities.

Now, section (28), this provision of people that are members of a Communist organization or advocate the tenets of world communism, in 1985 there were approximately 47,574 persons applying for visas that were found to be ineligible under that.

But, because of the McGovern amendment that we have mentioned earlier, in most cases automatic waivers of inadmissibility were submitted to the Immigration and Naturalization Service, and of that 46,788 were obtained.

On the section (29), which is espionage, sabotage, or other subversive activities, 10 people were found ineligible.

Under perhaps the more controversial section that Mr. Frank and others have criticized, section (27), persons that would engage in activities prejudicial to the public interest or endanger the welfare, safety, or security of the United States, a total of 33 persons were found ineligible.

Well, it is my submission that out of 7 million applicants, to find 33 people ineligible under this provision is not an unreasonable percentage.

I would like to say that perhaps of those 33, some of those might have subsequently had their ineligibility overcome, but because of the way our statistics and records are kept now under an automated system, I can't tell you precisely on that.

Cochairman HOYER. Would it be possible—go ahead.

Mr. NEWLIN. I have the impression, Mr. Chairman, that of those 33 that most of those were under the provision that would exclude them because we had reason to believe that they would engage in activities of a nature that would be harmful to national security.

Cochairman HOYER. In which case they could have been excluded, presumably under the other section, as well?

Mr. NEWLIN. Sometimes that does happen.

Cochairman HOYER. I guess the next question is, if that is the case, wouldn't it have been certainly better tactics and more accurate tactics in terms of public relations as it relates to the free flow of political ideas to exclude those individuals under the section dealing with subversive activity? I want to make it clear, "resent" would be too strong a word, but when Senator Wallop tends to imply that there are some who are not as sensitive to the issue of subversion and terrorism as he or others might be, he is totally and absolutely inaccurate.

He does a disservice, it seems to me, to members of the Commission to imply that they would serve that end in any way.

However, if, in fact, the 33 in question can properly be includable in a category other than the one under which they are determined somehow to be prejudicial to the public interest, but are, furthermore, aliens who after entry might engage in espionage, sabotage, or other subversive activity; why would one use the former category, which is clearly much more controversial, rather than the category that in my opinion is not controversial?

Mr. NEWLIN. If I may, Mr. Chairman, I will ask Mr. Cornelius Scully, who is in our Visa Office, to reply to that.

Mr. SCULLY. Yes. My name is Cornelius D. Scully. I am from the Visa Office.

Mr. Hoyer, some of the cases that are refused under (27) for other than foreign policy reasons are not clearly (29) cases in a classic sense.

There are applicants who are refused because they are engaging in certain kinds of study in this country at the behest of or with the support of Libya, where the activity per se is nothing more

than particular forms of academic study, but the context in which it is engaged in, the sponsorship, and the ultimate purpose of it, as indicated through other information that we have, makes it prejudicial to the public interest.

But I don't think that you can say that engaging in academic study in a specific field is espionage or sabotage or subversive to the national interest. So it gets very technical.

These are determinations that have been made with relation to certain activities that the Government of Libya engages in and certain efforts it makes to procure certain kinds of technical expertise to further those activities.

Now, since that is not per se 212(a)(29), those cases are refused under section 212(a)(27) under the more general proposition that those activities are prejudicial to the public interest, which we certainly believe that they are.

But it is not a classic foreign policy case of the kind that is frequently at issue with, say, Mr. Frank.

Cochairman HOYER. I understand your answer. The problem that I and others have is that "prejudicial to the public interest" is a much more subjective question. I understand what you are saying, that there is a fine line and of course there are very few cases here.

But it seems to me that that does cause a problem in terms of the subjectivity of the judgment and the difficulty therefore of an applicant in disputing that judgment.

You used Libya as an example, which certainly now is at great odds with the United States. We perceive Libya to be one of the centers of terrorism in the world today, and clearly, again, nobody on this Commission or in the Congress of the United States wants to do anything to further the goals of Qadhafi or the Libyan regime to further terrorism in any way.

At the same time, Mr. Scully, if (27) were not available, is it your judgment that under those circumstances, all 33 or a substantial portion of those 33 might be included within the ambit of (29)?

Mr. SCULLY. Some of them would, Mr. Hoyer, and some of them would not. As I say, this Libyan case is a slightly mixed situation.

Some cases are essentially classic internal security cases because we have always taken the position that if an alien is excludable because there is reason to believe he is coming to engage in espionage, there is also reason to believe that he is coming to engage in activities that are prejudicial to the public interest, since we take hostile espionage to be per se prejudicial to the public interest.

So, in most cases an espionage case is refused under both (27) and (29). So, for example, the statistics Mr. Newlin gave you, the 10 (29) refusals, 10 of the 33 (27) refusals were those same 10 people. This again is another problem, since our records are kept—have double purposes in different ways.

Cochairman HOYER. The double count as to each——

Mr. SCULLY. Yes, reason for exclusion. Others of those 33 were some of the Libyans, and there was a court case on that 3 or 4 years ago in which an exclusion of a Libyan who was coming to engage in aviation study was challenged, and the current legal advisor of the Department of State, then a Federal judge, held that it was a legitimate exclusion.

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But again, I wasn't trying to buff that up for purposes of raising a substantive question, just simply illustrative of the fact that not all of the cases that will fit under (27) necessarily could be automatically moved neatly and squarely over to (29) if (27) were to be repealed, for example. That was the only point I had in raising that particular point.

Cochairman HOYER. Let me make sure I understand. Would it be fair, then to say, that the 33 are down to 23?

Mr. SCULLY. If you had normal reporting, yes, sir.

Cochairman HOYER. If the Congress made a determination—and again, the Helsinki Commission, you understand, is not a congressional committee with legislative authority. That is not the purpose of this hearing. It is mandated, however—Senator Wallop and I might disagree on the policy of it—to review U.S. compliance as well as other nations' compliance with the Helsinki Final Act.

My question is: If it were determined that (27) was at least marginally, arguably in some way, undermining our commitment to the Helsinki Final Act, would it be fair to observe that perhaps it would not affect those 33 because at least 10 of them, and then if you were really pushed, more would fall within the ambit of (29) even if it were more convenient to put them in (27)?

It seems to me that we are talking about a de minimus number in light of the numbers that Secretary Newlin was talking about to begin with.

Mr. NEWLIN. Well, as we stated earlier, Mr. Chairman, these cases are not decided in a frivolous manner. They are given very, very careful consideration and I can assure you that the Secretary of State himself has taken an interest in the whole administration of the Immigration and Nationality Act, as was evidenced by his speech at PEN to which I referred.

Cochairman HOYER. Let me ask you about section (28) which focuses primarily on membership and the McGovern amendment waivers.

Looking briefly at these numbers, how many people during the last year were excluded under (28), solely under (28), not also overlapping with (27) and (29)? Do you have those figures?

Mr. NEWLIN. Well, it would be the difference between 47,574 and 46,788. In other words, let's say we are talking about several hundred, are we?

Cochairman HOYER. We are talking about almost 800.

Mr. NEWLIN. 800, yes.

Cochairman HOYER. In round numbers.

Now, can you tell me generally under what criteria they are not waived?

Mr. NEWLIN. They would not be waived, Mr. Chairman, under the terms of the act because we would feel that they did not meet the various criteria of the act for admissibility.

Cochairman HOYER. Can I ask about three specific cases? I have four cases, but I understand that Farley Mowat does fall in a different category.

What about Graham Greene? Graham Greene was mentioned earlier.

Mr. NEWLIN. Well, I am glad you mentioned Graham Greene because there is a certain amount of folklore that grow up around

some of these cases and I believe in the briefing material that I have here, Mr. Greene did apply some time ago.

The most recent information available to me is that Mr. Greene recently applied at our consulate general in Marseilles and was issued an indefinite validity B1-B2 visitor's visa. So, Mr. Greene is in possession, according to our records, of a valid visa.

Cochairman HOYER. Again, obviously, something changed. Was there a change in the people who work above the people with the green eyeshades? In other words, personalities change and therefore judgments can change, we all understand that. Was that the basis for the reversal? Was it just a different individual or personality applying policy? Or were there factual changes?

Mr. NEWLIN. Each application, Mr. Chairman, is considered on an individual basis based on the totality of the information we have available to us at the time and in accordance with the law as it stands at that time.

I can't answer that. All I know is that based on what I have available Mr. Greene might have had difficulties at one time but in light of his recent application and based on a careful review of all of the information available to us, he was found eligible for a visa.

I think as the Secretary of State made clear on January 11, that he says that these judgments in these matters are made by human beings and are therefore fallible. They are made in good faith and consistent with established policies concerning our national interest.

There is a presumption now in the administration of the act, and I think Mr. Frank alluded to this, that somebody that applies for a visa to come here for purposes of speechmaking or an artist or a writer, that the presumption is that they are admissible. There is a burden that you have to overcome for them not to be admitted.

Cochairman HOYER. Mr. Newlin, I have a number of other individual cases. I understand what you have just said then, and you are correct. I was going to observe that Congressman Frank has indicated that there has been, from his perspective, I hate to ascribe to the State Department, a more liberal attitude. I tend to be, ironically, probably the most outspoken defender of the administration on this Commission, as those of you who have watched the Commission for very long may know. I find it to be an ironic position. But Congressman Frank made that observation and I am glad to see that.

Let me ask you, though, in that context, we note, and you have mentioned, figures where the applications are very high and the exclusions are relatively very small. What is the cost of screening these cases?

According to the figures that were provided, I think, by you to the Subcommittee on Immigration in 1983, almost 27,000 nonimmigrant visas were refused, and of that figure 26,200 were waived.

In 1982 the figures were 24,439 to 23,917. I don't know whether the 47,000 relates to the same? Is that apples and oranges or is that——

Mr. NEWLIN. I think apples and oranges.

Cochairman HOYER. OK. How much are we spending to effect that procedure?

Mr. NEWLIN. Well, I don't have a cost estimate handy, Mr. Chairman. I could attempt, if you wish, to try to estimate that.

I would like to say that on this application of (28), it is a routine procedure. For example, any member of a Communist government or organization comes in and applies, it is ipso facto—say he presents a diplomatic passport from a Communist country. Obviously, he is ineligible.

Under present rules and under present law, the consul and the vice consul is obliged to find that person ineligible.

He is also, under current law, obliged to seek a waiver. This is a somewhat time-consuming but a routine procedure and we would have to get, I guess, time and motion studies and find out the number of people that are involved in this.

There are some cases where we have Immigration and Naturalization Service close at hand, where the waivers can be easily granted. In some other cases where there is no Immigration and Naturalization person present, it would have to be done by telegram. But it is a fairly routine thing.

In some other cases, in cases of (27), which is perhaps a more controversial thing, this can be a time-consuming procedure. It would require generally a much greater investment of time and energy on the part of a variety of people in the State Department and other agencies to process one of those.

In the case of (29), I would say it would fall somewhere in between the two extremes.

If I may, Mr. Chairman, I would like to clarify or maybe call on Mr. Hergen to answer your question as to the discrepancies in these 800 cases that you mentioned earlier under (28).

Mr. HERGEN. Mr. Chairman, I understand you are interested in the statistics, and I think it is an important point for your Commission.

If you make the number of denials, ineligibles, and subtract the number of waivers, you come up with a figure of about 800.

That figure, however, is certainly misleading. That number, about 400 or 500 of that 800 are statistical anomalies, either statistical anomalies or appear because a person applies, a Communist official with the official passport applies. His application is automatically denied, but before the waiver process can begin or is completed, he withdraws his application, or he doesn't come to pick his application up, and the overcome is therefore not entered into the record.

So, you have an accounting process where you will show a denial, an ineligibility, where in fact if the individual had gone through the process and completed it, he would have actually gotten a waiver, he or she.

Now, in Poland and Cuba, for example, that is quite common, and we can document 200 or 300 cases in each country each year.

Also, a large number of those figures, of the remaining 200 or 300, fall into those categories like the 212(a)(28)(F), the advocates of terrorism, or the categories that are specifically excluded from the coverage of the McGovern Act, which would still be listed as (28)'s but which would in fact not be necessarily denials because of mere membership in or political beliefs.

Cochairman HOYER. I realize you probably don't have that statistical breakdown, obviously, and that makes a substantial difference. As I understand what you are saying, of about 27,000 applicants, 26,200 are waived and 400 or 500 don't bother to proceed through the process. Theoretically, you would add that to your 26,200 and you may get up to 27.6, or 7 or 8, with there being even a smaller number that, in effect, you have weeded out in this process.

Therefore, your statistical anomaly, as you referred to it, would in effect be more supportive of the proposition that it may not be worth the money to get to there from here. I think that is a fair analysis.

Mr. HERGEN. That is a fair statement.

Cochairman HOYER. It may not be the one you wanted me to draw from your statistical anomaly, but I think it may well be drawn. And let me follow up, unless you wanted to make a comment on that?

Mr. HERGEN. No; I just wanted to mention one more point on the same issue, that because of the accounting year—we use the accounting year—there is always a loss in the carryover between the ineligibility at the end of the year and then the denial or the issuance of the waiver in the next fiscal year.

Cochairman HOYER. Which may bring that number even down more?

Mr. HERGEN. That is right.

Cochairman HOYER. I would be certainly interested if you could do a cost analysis. The problem is, you appear before these committees and they ask you these questions and then you spend hundreds of man-hours to answer those questions. It is an awful waste of time, and I don't want to do that. I don't think it is that key. I mean, I think the policy issue is much more important than the budget issue. But I think it is important for Congress to know how much we are spending on that.

We are not looking for preciseness. Can that be done? And if it can't be done——

Mr. HERGEN. We will make an effort to give you a best estimate on that, Mr. Hoyer.

Cochairman HOYER. That is the problem of having a member of the Appropriations Committee also on this Commission. It is a question of focus.

Mr. HERGEN. We appreciate your reasonable approach here and we will invest a prudent amount of time and effort to get you a good estimate.

Cochairman HOYER. Now, the second part of this question, which seems to me is related, is if it is on national security grounds that many of these waivers are withheld, then I reiterate, why retain affiliation as a grounds of exclusion? Does affiliation, in and of itself, have a utility or an important policy reason for being retained?

Mr. HERGEN. The ones that we do not request waivers of inadmissibility for are those cases, Mr. Chairman, that Congress excluded from the purview of the McGovern amendment. That is, members of the PLO and members of Communist-dominated labor

unions. Their excludability is not subject to the waiver provision of the McGovern amendment.

Cochairman HOYER. Would it be fair to observe that it is an existing premise of the United States, which I think is certainly a very widely held consensus within the Congress of the United States, that the PLO in fact advocates terrorism?

Congressman Frank referred to the *Achille Lauro* and referred to Arafat's relationship to the responsible parties. Would it be fair to say that they would be as easily excludable under the provisions dealing with terrorism and subversive activities as they would be under sole affiliation?

Mr. SCULLY. It seems to me, Mr. Hoyer, that the point, the question arises, suppose a PLO alien is coming to the United States for medical treatment, or suppose he is coming for some nonterrorist reason, whatever that nonterrorist reason might be.

Now, between 1977 and 1979 the McGovern amendment applied to the PLO and we would have automatically, and we did automatically recommend waivers for those aliens.

But Congress took exception to that as a matter of domestic or foreign policy, but not as an internal security matter. That is a policy question.

Cochairman HOYER. All right. That is a fair answer and I am sure you thought a good answer, and it may well be. I understand what the Congress did.

Let me ask you, finally, Mr. Newlin, do you believe that there are any changes in the law which are necessary? Although I understand your statement to be that you do not believe that present application of existing law in any way undermines U.S. adherence to the Helsinki Final Act, do you believe that there are any changes which would nevertheless enhance our position as it relates to the Helsinki Final Act in the context of various experts' meetings, conferences and the Vienna Review Conference that is coming up in October?

Mr. NEWLIN. No, Mr. Chairman, I do not believe so. I believe with the current application that we have, with the very careful review procedures, and with the policies that I have outlined, I believe that the application and administration of the Immigration and Nationality Act, as amended, does not require any revisions in this particular area.

We do have some with our colleagues on the Immigration Subcommittees, have some suggestions for improving the Immigration and Nationality Act perhaps in other areas.

But your question relates simply to these three categories, I believe, and my answer would be that we believe that our record is defensible, we believe that we are in accord with the aims of the Final Act, and we would not see the necessity for any changes at this time.

Cochairman HOYER. Mr. Newlin, again I appreciate you, Mr. Hergen, and Mr. Scully appearing today. Obviously many of the members of the Commission are at other hearings today. I expect there to be additional questions that we would like to submit to you for answers for the record. We would appreciate your responding to those.

Thank you very much.

Mr. NEWLIN. Thank you.

Cochairman HOYER. Next I would like to call to appear at the same time, Susan Shreve, president of the PEN Faulkner Foundation, and Dr. Juliana Pilon, who is the Senior Policy Analyst for the Heritage Foundation.

I want to thank both of you for being with us. I apologize for taking so long before we called you to testify.

As I called Ms. Shreve first, I will call on her first for testimony. You may proceed in any way which you want. You may either read your statement or have it included in the record as you have presented it and make comments from it, whichever way best suits you.

STATEMENTS OF SUSAN SHREVE, PRESIDENT, PEN FAULKNER FOUNDATION; AND JULIANA PILON, SENIOR POLICY ANALYST, THE HERITAGE FOUNDATION

Ms. SHREVE. I will read it, Mr. Chairman.

I am submitting for the record PEN's statement about the provisions of the 1952 McCarran-Walter Act concerning ideological exclusion and how these provisions affect writers and the free trade of ideas.

The PEN American Center, in cooperation with the Fund for Free Expression, sponsored a public reading in New York City in 1984.

At that time six American writers—E.L. Doctorow, Carolyn Forche, John Irving, Arthur Miller, Susan Sontag, and William Styron—read from the works of foreign writers whose entry into the United States had been made either difficult, humiliating or impossible as a result of the ideological exclusion provisions of the McCarran-Walter Act.

The writers included Argentine novelist Julio Cortazar, Palestinian poet Mahmoud Darwish, Italian playwright Dario Fo, Colombian novelist and Nobel laureate Gabriel Garcia Marquez, Chilean poet and Nobel laureate Pablo Neruda, and Uruguayan scholar Angel Rama.

Other writers excludable at one time in the years since 1952 were also mentioned and included Graham Greene, Doris Lessing, Alberto Moravia, Michel Foucault, and Czeslaw Milosz, also a Nobel winner who had sought sanctuary in the United States and graced American letters by his presence here now.

The list of excluded writers is extraordinary and includes some of the important voices of these generations.

For 30 years some of the outstanding writers in the world have been denied normal visas to visit the United States as a result of their political beliefs, thought subversive to our national security. It is just this kind of position taken by oppressive fascists and Communist regimes which has forced dissident writers, such as Milosz or Vladimir Nabokov, to have sought refuge in this country.

International PEN invited the United States to host the 48th International PEN Congress in New York and it was held in January 1986. Hundreds of distinguished writers from 86 international chapters came to discuss the theme, "The writer's imagination and

the imagination of the state." The conference was a week long and attracted considerable national and international interest.

What it accomplished, above all, amongst writers was an exchange of ideas, of beliefs, of understanding the world as it is in our time, in keeping with the International PEN Charter which states, "Literature, national though it be in origin, knows no frontiers."

In order to arrange for this conference to take place in this country, which has prided itself on its courage and strength to allow an individual to speak openly about his beliefs, it was necessary for Norman Mailer, the president of PEN, and Karen Kennerly, the director, to visit the State Department on several occasions to arrange for waivers for writers to whom invitations had been extended and to whom visas could only be granted under the present ideological exclusion provisions on a restricted basis.

Not only was the process of obtaining waivers long, time consuming and expensive for the United States and PEN, the fact that it was necessary was contrary to the spirit of this country's fundamental belief in the freedom of speech.

Our argument is not, however, with the bureaucracy or with the Department of State, who did in fact arrange for these waivers, but with the ideological exclusion provisions themselves.

Pablo Neruda, a Nobel Prize winning poet in 1971 and Chile's Ambassador to France, was a member of the Chilean Communist Party. His work was of profound influence on contemporary literature, and like the Nobel Prize winning novelist, Gabriel Garcia Marquez, who was at one time a member of the Communist Party, Neruda under the present provisions would be considered a risk to American democracy if granted a normal unrestricted visa.

Dario Fo, the Italian playwright whose work is performed here, has been denied entry to this country without waivers. In one instance, his trip was to be sponsored by the Italian Government, New York University, and the Public Theatre in New York, certainly not logical institutions to sponsor Fo if he were a threat to the American Government.

Recently, Margaret Randall, a poet, editor, translator and photographer who had lived abroad for 25 years, applied for permanent residency status in the United States. She had given up her United States citizenship in 1967 when she married a Mexican national. She was subjected to questioning by INS officials who were little concerned about personal ties in the United States. She was born here, her parents live here, one of her children is a U.S. citizen, and she is married to an American now.

The INS was primarily interested in her published ideas in the over 40 books she has written and her intellectual associations. These officials were obliged to be on the lookout for anyone whose thoughts might be considered subversive. On the 2d of October, 1985, after a year of deliberation, INS denied Margaret Randall's request for permanent residence status and ordered her deported from the United States.

There was a wonderful excitement at the International PEN Congress in New York several weeks ago. That writers from all over the world had gathered in one place to talk to one another about their concerns for this time and the future, about their be-

liefs and understanding of the nature of truth was a testament to what this country has always embraced as fundamental to individual freedom.

As writers, we need to speak to one another face-to-face, to confront and exchange ideals crucial to understanding the world as it is, and providing some basis for continuity.

We are looked to all over the world, as Americans, as an example of freedom, and it is outrageous that we should have an act which so undermines our basic principles.

The members of PEN American Center are convinced that the free exchange of ideas amongst people and nations strengthens our national security, and as citizens of the United States freedom of expression is our right.

Thank you.

Cochairman HOYER. Thank you very much, Ms. Shreve, for that excellent statement.

Before asking you any questions, I will ask Dr. Pilon, who is the senior policy analyst at the Heritage Foundation, to make her statement now. Doctor if you want to read your statement you may, or excerpt from it with the balance being included for the record.

Ms. PILON. Thank you very much.

In the best of all possible worlds, there would be free speech, free borders and, I would suppose, no congressional hearings, certainly shorter congressional hearings. But on this imperfect planet we have egregious violations of human rights, terrorism, genocide.

By way of relative retaliation and indication of concern, we have the Helsinki accords, the U.N. Human Rights Commission, visa restrictions, and, yes, congressional hearings. We make speeches and condemn violators of human rights in the strongest possible terms. Sometimes, however, we need stronger measures of disapproval.

It is with satisfaction, therefore, that I note the fact that H.R. 2361 contains a section allowing the denial of entrance visas to any alien who has participated in the persecution of any person on grounds of race, religion, national origin, or political opinion, in association with Nazi Germany or any of its allies during 1933 to 1945.

I have lost much of my family in the Nazi holocaust.

I take it, of course, that this section would ipso facto apply to such a person from the Soviet Union thus involved during the period of the Nazi-Soviet Pact of 1939 to 1941.

Indeed, the United States should express its repugnance of such activities. What is not entirely clear to me is why we should do this only in connection with such persecutions as took place four decades ago and not current ones.

Why not apply the definition to any alien who is identifiably engaged in similar activities in totalitarian regimes today?

Unfortunately, H.R. 2361, in effect, repeals the provision we discussed earlier, the amended McGovern amendment, which reads as follows:

Section (d):

The Secretary of State may refuse to recommend a waiver for aliens from signatory countries which are not in substantial compliance with the provisions of the Helsinki Final Act, particularly the human rights and humanitarian affairs provisions.

I can think of several persons who would qualify for denial of visa under that provision, though not under H.R. 2361. For example:

Professor Samuel Zivs of the virulently Anti-Semitic Anti-Zionist Committee of the Soviet Public.

Dr. Marat Vartanyan, deputy director of the U.S.S.R. Center for Mental Health, who is indirectly but irrevocably responsible for psychiatric torture of political prisoners.

I can certainly provide you a longer list of doctors directly involved in psychiatric torture, as well.

Any official from Perm Camp VS-389/36, where the Ukrainian priest Iosif Terelya was sent to serve 7 years of torture for his religious beliefs. I have with me a whole list of such officials, as well. But there are so many others.

And then there is also section (c) of that same code which applies to the PLO. Much has been heard recently about moderate wings of the PLO.

I am pleased to hear Representative Frank say that the new bill would apply to PLO chief Yassir Arafat. Arafat, of course, has an open invitation from the United Nations to come to address that organization. So, we may have an opportunity to have to disinvite him.

Arafat is responsible, it appears, for the murders of U.S. Ambassador to Sudan Cleo Noel and New Yorker, Leon Klinghoffer.

I thought the discussion of the State Department regarding the PLO provision was good, so I will let that rest.

I also have some difficulty with section 3 of H.R. 2361, which would allow visa restrictions on aliens who may engage in criminal activity which endangers public safety or national security. Why not exclude all those who would engage in any activity that endangers public safety or national security?

As a former philosophy professor, having emigrated from a Communist country opting for liberty, I fully support freedom of expression. I believe that truth will prevail amidst uncensored dialog.

But if the United States should oppose the entry here of someone who collaborated with the Nazis, it should extend the same opprobrium to officials from other regimes currently responsible for torture, for severe violations of the Helsinki accords, and other international human rights agreements. Nor should members of terror sponsoring groups, like the PLO, be exempt.

I frankly resent the double standard.

If H.R. 2361 does not allow for this, it should be amended accordingly.

Thank you very much.

Cochairman HOYER. Thank you.

Dr. Pilon, I appreciate your statement and obviously you have very personal reasons as well as philosophical reasons underlying

that statement. You are very sensitive to the violations that have been perpetrated by individuals.

I intend to ask Ms. Shreve some questions, but first, in your statement, when you talk about exclusion of persons from certain regimes, is it fair to interpret your remarks as speaking to individuals about whom we have information or a substantive reason to believe that they have participated in those events, as opposed to simply being members of a nation? We clearly believe the Soviet Union perpetrates human rights violations. I take it your position would not be that ipso facto, as you say, that we would exclude all Soviet citizens based upon their affiliation with the Soviet Union.

Ms. PILON. That is right.

Cochairman HOYER. Ms. Shreve, let me ask you a couple of questions, if I may.

You have heard the State Department's testimony. It says that it does not deny visas on ideological grounds.

Clearly, you believe that they do. Could you expand upon that in terms of your experience? You have mentioned a number of people. Presumably you have pursued those cases or PEN has pursued those cases.

Ms. SHREVE. PEN has pursued the cases. And I did not know about Graham Greene, that Mr. Newlin brought up. I do know Garcia Marquez has been denied an unrestricted visa but has been given a visa to come under certain conditions to the United States, and has made—and I feel strongly about putting ourselves in this position—has made a decision to not come on a restricted visa.

So, that is the case. That is probably the case that so much has been made of recently by us, by others, because he is so popular on college campuses because of "100 Years of Solitude," because he is a Nobel winner, and because of the attention recently to Latin American writers.

So that we have really, by the McCarran-Walter Act, allowed for ourselves, it seems to me, to be embarrassed, although he could come to this country under certain provisions.

Cochairman HOYER. Ms. Shreve, you mention that particular case. Have you discussed with individuals within PEN or other people in the writing community that the act or its implementation and enforcement has any kind of a chilling effect on the desire to apply for a U.S. visa, in this particular instance obviously the decision was made not to come, or generally not to apply?

Ms. SHREVE. In a number of cases, and I cannot cite them, Mr. Chairman, specifically, though there have been a number of writers who have, because of the long process involved and the humiliation involved, have decided not to apply, so I believe as a statement of principle, because the United States has announced itself as the country that it is, and this law seems paradoxical.

Cochairman HOYER. Have you participated in or made an analysis of the act and do you have any specific suggestions as to changes?

Ms. SHREVE. I think in terms of—and this, I should say that I am a Johnny-come-lately to this, and because I am in Washington, was called by PEN, on whose board I serve—that PEN's feeling is to do as much as possible for the repeal of the act, and in particular the three sections—what is it, (27)——

Cochairman HOYER. I would presume, however, that PEN does agree that there are those who have involved themselves personally or are members of organizations where their purpose is terrorism or to engage in subversive activities.

Ms. SHREVE. Absolutely.

Cochairman HOYER. That that would be a legitimate reason to exclude them from entry into the United States.

Ms. SHREVE. It is simply that, as I believe Congressman Frank pointed out, writers, because they have written down what they think, tend to be caught by this more frequently than others, those who have been excluded as a result of their political beliefs.

We are certainly not condoning terrorists or anyone who would be a danger to national security.

Cochairman HOYER. Fine. Thank you. I have some other questions, but I have another commitment myself and there is nobody for me to turn to and say take over the hearing. So, if I leave, the hearing will have to conclude, so I had better push on.

Dr. Pilon, are there any concerns that you have with reference to the administration and application of the existing statute as it relates to the free flow of ideas, however much we might dislike those particular ideas? Do you or does the Heritage Foundation have any concerns about that?

Ms. PILON. I am glad that you put it in those terms, because let me start by saying that I will be the first to protest when sometimes some information is kept classified that I think I should look at and other people should look at.

I have in mind one example: I understand recently that there has been a CIA report on the use of slave labor in the Soviet Union, which is classified. It is not clear to me why it should be classified. But in any event, there may be other cases.

Cochairman HOYER. The Secretary of the Treasury believes that it will be difficult to implement certain provisions of the act—as a matter of fact, I have had an amendment, as you may know, which deals with that on the Treasury-Postal appropriations bill.

I would suggest to you, one of the reasons is because the Secretary of the Treasury is not interested in dealing with that issue.

Go ahead.

Ms. PILON. I am glad you mentioned that. We have had some concern about that ourselves at the Heritage Foundation. But here is one case.

Nevertheless, with that proviso, let me say that in all candor I cannot discuss any of these cases without all the information that is available to the U.S. Government.

Now, Representative Frank, for example, mentioned, in a somewhat sleight-of-hand fashion, that, well, you know, these lawyers, they just say I can't discuss the information in public.

Now, again, let me not say that I have sympathy with lawyers in every case. However, it is relevant, it seems to me, that indeed we may not have all the information available.

From the information that I do have, many of the cases that have been brought to our attention, the cases that have concerned PEN, and so forth, there may be very good reason to call into question the judgment of particular instances.

Nevertheless, it seems to me that we do need to keep in mind the qualification that there may be more to each decision than meets the eye of the person who does not have access to classified information.

Cochairman HOYER. Doctor, would it be fair to conclude, then, from your answer to that question that if in fact the exclusion is based upon some additional information, that it may be justified? But if, in fact, it is simply—and what I am concerned about, and I think Congressman Frank and Senator Simon, and others are concerned with—is that the act now gives wide discretion to exclude on relatively subjective grounds for membership in certain organizations which may or may not be a threat to the United States or, in the words of (27), for activities prejudicial to the public interest. That is a fairly broad criterion, notwithstanding the fact that we heard earlier that there may only be 23 individuals that were excluded under that section. There is the possibility for the sleight of hand being performed by the administration and not by Congressman Frank.

Does that concern you?

Ms. PILON. Yes, that is right. I am also very uncomfortable with the concept of the "public interest."

The statement that is in the record by Warren Leiden of the American Immigration Lawyers Association states the same thing, that there is some concern that that phrase, "in the public interest," could be abused.

And I would prefer, then, to concentrate on the national security aspects of the danger. I do take exception to the provision in the current bill which specifically refers only to criminal activity that endangers public safety.

For example, take the case that was mentioned earlier about the Libyan engaged in noncriminal but nevertheless activity that is prejudicial to the national interest. I think that is the kind of thing that ought to be the concern of your Commission.

Cochairman HOYER. To followup on that observation, you heard my question to Mr. Scully, if in fact that was the case, would it not be possible to include such instances within the ambit of the security interest, as opposed to prejudicial to the public interest section?

Obviously, a risk to the security interests of the United States is clearly a risk to the public interest. Do you believe that both are necessary criteria? If you allow such a broad definition, as opposed to specific security allegations it is very difficult for an applicant to say, no, you are wrong.

Ms. PILON. I would prefer to have specific security allegations. But let me not deny the significance of the other issue that I discussed before, and that is the amended McGovern amendment.

Because when we are talking about, for example, a psychiatrist who engages in the Soviet Union in psychiatric torture, we are not really talking about somebody who is going to be a danger to our national security unless that concept is pretty wide.

I think the way that amendment is currently worded—I mean title 22, U.S. Code 2691, A through D—that amendment ought to be preserved, it seems to me, and the Helsinki Commission especially, I think, would have an interest in that preservation.

Cochairman HOYER. I think that is a good point.

Well, I want to thank both of you on behalf of the Commission. I think both your statements are helpful. They don't necessarily speak from the same perspective, but I think they are both very helpful as we look at this issue.

We are going to get the statements to all the members of the Commission.

Clearly, this is a matter that will be pursued in the House by Congressman Frank and others, and the Helsinki Commission will have an interest in that. Clearly, it will be a subject for discussion, both in Bern and in Vienna.

Again, it seems to me that it is prudent for the Commission to have as thorough an understanding of the issue as is possible inasmuch we will need to respond to allegations which will be made, contrary to the thoughts of some, whether this Commission ever meets or not.

As long as questions are raised about the Soviets and their performance, they are going to defensively turn and ask questions about our performance. We don't agree with what they are doing, clearly, but we do agree with the fact that if we are all watching one another in an open system, the system will probably perform better, that truth will win out, if you will.

I think this hearing was, therefore, useful in that context, and I thank you for participating.

I also want to congratulate the staff.

We have statements that are going to be included as part of the record from Helsinki Watch, the ACLU, and the American Association of Immigration Lawyers, to which, Doctor, you referred earlier.

Any other groups that would want to submit testimony, the record will be open for the receipt of such testimony.

Again, thank you, Ms. Shreve and Dr. Pilon, for being with us today. Thank you very much.

This hearing is adjourned.

[Whereupon, at 12:21 p.m., the hearing was adjourned.]

APPENDIX 1

SECTION 212(a) (27), (28), AND (29) OF THE McCARRAN-WALTER ACT

(27) [30] Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;

(28) [30] Aliens who are, or at any time have been, members of any of the following classes:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) [31] Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now

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[30] Title IV of the Intelligence and Intelligence-related Activities Authorization Act for Fiscal year 1979 (Pub. L. 95-370, Sept. 17, 1978, 92 Stat. 627) provides as follows:

TITLE IV—ADMISSION OF CERTAIN EXCLUDABLE ALIENS

SEC. 401. By October 30, 1979, the Attorney General shall report to the Permanent Select Committee on Intelligence and the Committe on the Judiciary of the House of Representatives and the Select Committee on Intelligency and the Committee on the Judiciary of the Senate regarding those cases during the period beginning on October 1, 1978, and ending on September 30, 1979, in which (1) the Director of the Federal Bureau of Investigation has notified the Attorney General that the Director knows or has reason to believe that an alien applying for admission into the United States is an excludable alien under the terms of section 212 (a) (27), (28), or (29) of the Immigration and Nationality Act (8 U.S.C. 1182a)), and (2) such alien is subsequently admitted into the United States.

[See footnote 36, p. 39, for grounds for such admissions.]

[31] See footnote 36, p. 39, relating to the so-called McGovern amendment.

bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) [31] Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) [31] Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950,[32] unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) [31] Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the

[32] Section 7 of the Subversive Activities Control Act of 1950 (50 U.S.C. 786) was repealed by the Act of Jan. 2, 1968 (81 Stat. 766).

unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H)[31] Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

(I)[31] Any alien who is within any of the classes described in subparagraphs (B), (C), (D), (E), (F), (G), and (H) of this paragraph because of membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes, or (ii)(a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise inadmissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General when applying for admission to the United States and the Attorney General finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii)(a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for admission actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under (ii) of this subparagraph;

(29)[33] Aliens with respect to whom the consular officer or the Attorney General knows or has reasonable ground to believe probably would, after entry, (A) engage in activities which would be

[31] See footnote 30, p. 35, relating to a report on admission of aliens described in these paragraphs.

prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, (B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means, or (C) join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950; [34]

[34] Section 7 of the Subversive Activities Control Act of 1950 (50 U.S.C. 786) was repealed by the Act of Jan. 2, 1968 (81 Stat. 766); see footnote 36, p. 39.

[34] Section 21 of the Act entitled "Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2691, popularly known as the "McGovern Amendment"), as added by section 112 of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95-105, Aug. 17, 1977, 91 Stat. 848) and amended by section 119 of the Foreign Relations Authorization Act, Fiscal Year 1979 (Pub. L. 95-426, Oct. 7, 1978, 92 Stat. 970) and by section 103 of the Department of State Authorization Act, Fiscal Years 1980 and 1981 (Pub. L. 96-60, Aug. 15, 1979, 93 Stat. 397), provides as follows:

SEC. 21. (a) For purposes of achieving greater United States compliance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (signed at Helsinki on August 1, 1975) and for purposes of encouraging other signatory countries to comply with those provisions, the Secretary of State should, within 30 days of receiving an application for a nonimmigrant visa by any alien who is excludible from the United States by reason of membership in or affiliation with a proscribed organization but who is otherwise admissible to the United States, recommend that the Attorney General grant the approval necessary for the issuance of a visa to such alien, unless the Secretary determines that the admission of such alien would be contrary to the security interests of the United States and so certifies to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate. Nothing in this section may be construed as authorizing or requiring the admission to the United States of any alien who is excludible for reasons other than membership in or affiliation with a proscribed organization.

(b) This section does not apply to representatives of purported labor organizations in countries where such organizations are in fact instruments of a totalitarian state.

(c) This section does not apply with respect to any alien who is a member, officer, official, representative, or spokesman of the Palestine Liberation Organization.

(d) The Secretary of State may refuse to recommend a waiver for aliens from signatory countries which are not in substantial compliance with the provisions of the Helsinki Final Act, particularly the human rights and humanitarian affairs provisions.

[See report on impact of this provision in footnote 30, p. 35.]

APPENDIX 2

United States Department of State

Washington, D.C. 20520

March 10, 1986

Dear Mr. Chairman:

I appreciated the opportunity to testify before the Commission on the relationship between the administration of the Immigration and Nationality Act, as amended, and our obligations under the Helsinki Final Act.

As requested, I am submitting for the record replies to the 16 additional questions enclosed with your February 18, 1986 letter. In response to Co-chairman Hoyer's request at the hearing, I am also submitting an analysis of manpower expended processing waivers concerning section 212(a)(28) ineligibility.

I extend best wishes for your forthcoming meetings with your CSCE colleagues.

Sincerely,

Michael H. Newlin
Deputy Assistant Secretary
Bureau of Consular Affairs

Enclosures:

1. Qs & As from February 6 Hearing.
2. Analysis of Manpower Expenditures.

The Honorable
Alfonse M. D'Amato,
Chairman, Commission on Security and
Cooperation in Europe,
United States Senate.

QUESTIONS AND ANSWERS FOR THE RECORD FOR
DEPUTY ASSISTANT SECRETARY OF STATE FOR CONSULAR AFFAIRS
MICHAEL NEWLIN

Q. 1. The State Department has testified in the past that it wishes to retain authority to deny visas for foreign policy reasons, arguing that the conduct of foreign policy is an integral part of protecting the national security. Some critics of U.S. administration of the visa law have claimed that some people have been denied visas under this rubric merely because they disagree with U.S. policy. I believe that this vague "foreign policy" reason was invoked in 1983 for exclusion of the Nicaraguan leftist Tomas Borge and the Salvadoran rightist Roberto D'Aubuisson, both of whom had been granted visas on previous occasions. Could you clarify or expand upon this problem of visa denial for foreign policy reasons, perhaps with some examples? Also, state the factual considerations underlying the denial of visas for Tomas Borge and Roberto D'Aubuisson.

A. The State Department believes that the ability to deny visas for foreign policy reasons (which, in practice, is exercised rarely) is an essential part of protecting national security. As the Secretary of State has stated, we do not deny visas simply because the applicants disagree with U.S. policy.

Concerning Tomas Borge, his denial is currently sub judice and I believe it would not be advisable to go beyond the replies made at the February 6 hearing.

Mr. D'Aubuisson has been issued U.S. visas on a number of occasions in the past and has also been denied U.S. visas in the past. Each decision has been made on a case-by-case basis in accordance with U.S. immigration law and in light of circumstances at the time. Obviously the circumstances have changed since we were discouraging Salvadoran presidential candidates from coming here in February 1984.

Q. 2. The Select Commission on Immigration and Refugee Policy recommended in 1981 that the decision to deny visas on foreign policy grounds (under subsection 27) be made by the Secretary of State or a high-level designee at State instead of by a consular officer or the Attorney General, as the law now specifies. Would this change in the law cause the State Department any problem?

A. State Department practice concerning 212(a)(27) denials is that such decisions are taken at a high-level. The very few denials on foreign policy grounds are made either by the Under Secretary for Political Affairs, the Deputy Secretary or the Secretary of State. Thus, substantively the recommendation of the Select Commission is already in effect and there is no need to modify the INA to implement it.

Q. 3. I have reviewed the statistics you provided the Subcommittee on Immigration in June of 1984 on this issue. Are you able to tell us what countries the majority of these excludables come from? Are they primarily from Latin America and Eastern Europe? If you are not prepared to give us that information now, would you please compile those statistics and provide the Commission with a report later?

A. The statistics show that about 90% of ineligibility under sections 212(a)(27), (28) and (29) results from membership in Communist organizations. Thus, the largest number of such cases came from Eastern Europe, China and Cuba. Of course, the vast majority of cases under 212(a)(28) are automatically subject to waiver under the McGovern Amendment. As for 212(a)(27) denials, in 1984 approximately half of the 44 refusals came from Cuba. The other major area was Western Europe but this is misleading since many of the applicants affected were either Libyans or Iranians who applied at European posts.

Q. 4. The number of people refused visas is not large, so the problem raised by the so-called ideological exclusion sections of the visa law does not seem to be so great as some of the critics contend. But these critics state that the problem is in fact larger than it seems because many applications are abandoned when delays in visa issuance prevent arrival in time for scheduled events, and because many people don't apply when they know the process will be too time-consuming and, to some applicants, humiliating. How do you respond to these views?

A. The Department agrees that the problem of denials on foreign policy grounds is not as great as some critics contend. As for delays, we make every effort to adjudicate applications promptly. A review of recent experience with procedures followed when considering applications which could come within 212(a)(27), (28) or (29) does not substantiate the charge that many applicants are prevented from arriving in time for scheduled events.

The current application form contains questions relating to grounds of inadmissibility determined by law.

Q. 5. U.S. visa law has been criticized for giving too much discretion to the officials who administer it. They point to the phrase "prejudicial to the public interest" in section 212(a)(27) and to the phrase "activity subversive to the national security" in (29). Do you think deletion of these phrases from the law would endanger national security?

A. The specific phraseology is not as important as is the Executive's continued ability to exclude aliens for foreign policy and internal security reasons. Therefore, we would have no objection in principle to deletions of the quoted phrases, provided it is clear that the Executive would retain its existing powers in this area. The Department's ultimate position, however, would depend on the exact wording of any proposed change in the INA.

Q. 6. Would it be useful to amend the visa law to include a waiver mechanism for denials under 212(a)(27) and (29) so that economic interests or foreign policy interests could be taken into account in considering the admission of some individuals -- such as for trade negotiations, for example, or to prevent retaliation against the visit of some American official?

A. It would appear anomalous to consider waiving ineligibility to permit the entry of an alien when the reason for the alien's ineligibility is that there is reason to believe the alien will engage in activities prejudicial to the public interest or which would endanger the welfare, safety or security of the United States. That would seem to be especially true in cases in which the prejudicial activity is espionage or sabotage.

Q. 7. Would the Department be opposed in principle to amendment of sections 212(a)27, 28 and 29 to eliminate the McGovern Act's mandatory waiver process, yet retain the current scope of the three sections, the exclusions required by the Solarz Amendment, and the present degree of discretion for the Department's exclusion decision, based upon a formulation citing United States' foreign policy interests as grounds for such exclusions?

A. As to the overall question, we have great difficulty envisioning the nature of the change which would be made. It appears that the only substantive change which would result would be repeal of the McGovern Amendment, but that is not entirely clear. I am reluctant to comment further without clarification of what is intended.

As a technical matter the Solarz Amendment to the McGovern Amendment does not require the exclusion of any alien. It denies the benefits of the McGovern Amendment waiver to aliens ineligible because of PLO affiliations, but it does not require their exclusion. PLO cases are subject to individual case-by-case determination and a waiver of ineligibility may be recommended in any individual case. It is just that no such recommendation is required in such cases.

Q. 8. Would the Department be prepared to draft such amendment language and submit it for Congressional action?

A. As stated in response to the previous question, we are uncertain as to what is intended. (For example, the McGovern Amendment relates only to section 212(a)(28)). In any event, any proposed legislation which the Department might seek to submit to the Congress, including any proposal relating to amendment of the INA, would require, first, careful consideration and coordination within the Department and, then, coordination within the Executive Branch under long-standing requirements and procedures. For this reason, I am not in a position to commit the Department to such a course of action.

Q. 9. Does the Department believe that section 212(a)28, as administered under the provisions of the McGovern and Solarz Amendments, serves a national security purpose?

A. On balance, we believe that U.S. interests would be best served by preserving section (28)'s existing grounds for exclusion. However, we are currently considering whether it would be possible to make changes so that the current process would be less burdensome while at the same time protecting important U.S. interests.

Q. 10. Of what benefit is it to the United States to require persons to seek a waiver to enter the United States if they were ultimately admitted anyway?

A. I believe that the answer to this question is contained in the answer to the previous question.

Q. 11. Weighing potential benefits to the United States against risks to the United States, on balance does the Department believe the interests of the United States would be best served by modifying section 212(a)28 to eliminate those grounds for exclusion which are subject to the McGovern Amendment's mandatory waiver process? (When answering this question, the Department should take into account both the continuation of the Solarz Amendment's categories of non-waiverable grounds to the Department under the current application of section 212(a)27.)

A. This is an excellent question and one which the State Department, and other interested Executive Branch elements, are currently examining.

Q. 12. The provision of the Solarz Amendment designed to keep representatives of the Palestinian Liberation Organization out of the United States is tied to section 212(a)28 as its enforcement provision. If section 28 is repealed, how do we keep P.L.O. members out of the United States?

A. If section 212(a)(28) were repealed in its totality, the current basis for finding P.L.O. members ineligible -- section 212(a)(28)(F) -- would disappear. Individual P.L.O. members could still be denied admission under either section 212(a)(27) or (29) if the facts of the individual case supported such a denial. Under existing and long-standing interpretations of those provisions, however, P.L.O. members could not be excluded as a class solely by reason of their P.L.O. membership.

Q. 13. Do you believe we should allow into the United States members of the P.L.O. unless we can prove that the specific individual seeking entry "...is likely to engage after entry (into the United States)" in espionage, sabotage, other criminal activity endangering public safety or national security, terrorism, or seek the violent overthrow of the United States Government?

A. The Department of State under current circumstances sees no valid reason to change the present policy with respect to P.L.O. members.

Q. 14. Presently, a person is excluded from entry into the United States based upon membership in the P.L.O., even without proof that the specific individual engaged in terrorist acts, or is likely to engage in terrorist acts in the future. Also, no proof of acts against the United States is required. How would H.R. 2361 change this situation?

A. Enactment of H.R. 2361 in its present form would make a fundamental change in the treatment of P.L.O. members. First, membership in or affiliation with the P.L.O. would be eliminated absolutely as a ground for denial of admission. Second, having previously committed terrorist acts would also be eliminated as a ground for denial of admission unless the act or acts committed were directed against the United States or a United States citizen. Thus, those P.L.O. members or affiliates who committed acts against United States property or citizens would be denied admission, but those who had committed such acts only against non-American property or citizens (Israeli, French, German, etc.) would not be denied admission for that reason. It should be emphasized, however, that under H.R. 2361 any alien P.L.O. member or other -- coming here to commit a terrorist act in the United States would be denied admission for that reason.

Q. 15. How would you react to a change in the law that would prevent you from excluding a person from entry unless you could show that he or she was likely to commit a terrorist act after entry?

A. I assume for the sake of this question that it is not intended to suggest that authority to deny admission to potential spies and other intelligence operatives should be eliminated. If that is intended, we would have to object in the strongest possible terms. Confining the question to "terrorists", current law authorizes denial of admission both of those coming to commit terrorist acts and of those who have in the past committed such acts even though their purpose in coming here is not to commit such acts now. I think it would be highly inappropriate to remove from the law the Executive's existing authority to deny admission to individuals like the assassins of Leon Klinghoffer, Lord Louis Mountbatten or Swedish Prime Minister Olaf Palme simply because they do not intend to commit any further such outrages during their proposed visit to the United States.

Q. 16. How probable is it that you would be able to assemble evidence to show such a likelihood?

A. As I indicated in the response to the previous question, current law authorizes denial of admission to those seeking to commit terrorist acts after entry. In considering such cases under current law, we apply a "reason to believe" standard since that is the standard prescribed in section 221(g) of the INA. Moreover, we make use of classified information in our consideration of such cases, often classified information of a higher than normal degree of sensitivity.

If your question implies that we would be required to disclose publicly the information upon which we have relied in order to sustain a denial of admission on the basis of anticipated terrorist acts or that we would be required to meet a higher evidentiary standard -- e.g., proof beyond a reasonable doubt -- then my answer would have to be that the task would become immensely more difficult, perhaps impossible.

MANPOWER EXPENDITURES FOR THE SCREENING PROCESS UNDER 212(a)(28)

The following are estimates only, and apply to worldwide NIV applicants ineligible under 212(a)(28)(C) for whom waivers are routinely recommended. The figures represent incremental effort incurred solely because of (28)(C) ineligibility:

Officers at posts abroad	2.0 man-years
Foreign Service Nationals at posts abroad	13.0
Officers in Department	0.7
Support Staff in Department	0.7

Method: An informal survey was made of several representative visa issuing posts and action officers in the Visa Office, combined with best estimates based on experience. Estimates were made of the average time devoted to a typical case solely because of ineligibility under (28)(C) by officers and staff both overseas and in the Department. These figures were multiplied by statistical data available for FY 85. An adjustment was made for a projected increase in FY 86 at Chinese posts (the latter process over half of (28)(C) cases). Except for Beijing and Budapest, where the total incremental FSN efforts are the equivalents of five positions and one position respectively, the resources devoted to (28)(C) are widely scattered equivalents of fractional positions.

Allowance was made for certain other tasks or overhead associated with administering ineligibility under (28)(C). It was assumed that the Visa Office is the only office in the Department which devotes any significant time to the processing of (28)(C) cases.

APPENDIX 3

STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

BEFORE

THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Hearing on the McCarran-Walter Act

I am particularly pleased that the Commission on Security and Cooperation in Europe has convened hearings on the use of visa denials and exclusions for political beliefs.

On the long and rocky path of immigration reform, we have overlooked a section of the law that was overbroad when it was enacted, overreaching when it has been implemented and -- to be blunt about it -- very embarrassing to a nation which thrives on free speech and the marketplace of ideas.

Barring individuals and groups from the United States solely because we do not like what they say or what they write represents a danger to our own values, a shroud of censorship on our own people and an unnecessary violation -- singular as it is -- of the letter and spirit of our obligations under the Helsinki Final Act.

Diversity, dialogue, exchange of ideas are the life-giving elements, the water and air, of American tradition; exclusion, restriction, repression of ideas the features of far more troubled, less confident nations.

A free trade in ideas, Oliver Wendell Holmes wrote, is the theory of our Constitution; "...when men have realized that time has upset many fighting faiths, they may come to believe the very foundation of their own conduct that the ultimate good desired is better

reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out."

To be sure, we have a legitimate right and duty to maintain proper border controls. Those controls must be all the more clear-eyed and effective in a day of supersonic travel, sophisticated espionage, a poisonous drug trade, and increased resort to terrorism.

And that is all the more reason to update our immigration laws so officials can concentrate on true threats to our national security and public welfare.

There are 33 categories of exclusions in Section 212 (a) of the McCarran-Walter Act. Many of them are legitimate grounds for exclusion, others perhaps questionable today. But the sections before us here, 212 (a) 27 and 28, deserve to be expunged or drastically revised.

Under the sweeping language of activities "prejudicial to the public interest" or "subversive to the national security," these provisions have led to the denial of visas to scores of widely respected foreign writers, artists and political figures. Some have been to the right of center, most of them have been to the left. Most of the names are familiar to the members of the committee, but I'll bet that a majority of Americans who have read Farley Mowat's compelling story "Never Cry Wolf" or watched Charlie Chaplin's movies or admired the work of a number of famous painters did not

know that they were banned from the United States because their ideas were thought to be subversive. The very process by which foreign intellectuals and political leaders are given a visa is demeaning. And the stigma of past associations and publications become a real nightmare for many exiles from totalitarian states who nevertheless remain trapped in the computerized black book of suspects. I've often wondered how we would react if we were given the third degree about our beliefs when we traveled to London or Munich or Istanbul.

The actual number of visa denials or exclusions may be low. Of all the writers who attended the recent PEN Congress in New York, very few were forced in the end to gain waivers of their "excludability" and none, to my knowledge, were barred. But some, including Nobel Prize-winning authors, did not come, because they refused to submit to questions about their political views.

And that is **our** loss. For these exclusions and denials are a form of censorship that intrudes on the First Amendment rights of Americans to hear different ideas and arguments. Today's television and radio can bring right into our living rooms the images and voices of exponents of every political and artistic tendency around the globe. To deny these speakers entry onto our shores insults the intelligence of the American people, as well as injuring our freedoms.

Furthermore, the McCarran provisions, which we should recall were vetoed by President Truman, are totally at odds with our commitments

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under Basket Three of the Helsinki accords. While Soviet violations are far more flagrant, the McCarran provisions can not be reconciled with any one of the four undertakings to which we pledged ourselves in 1975: freer movement of people, an increase in the dissemination of information and measures to encourage more cultural and educational contacts and exchanges.

I do think we have made a little progress over the years in the implementation of the ideological exclusions. I was pleased to hear the Secretary of State say that there is no policy for denying visas because the applicant disapproves of the United States or some of its policies. Recently, our courts have begun to question the use of the McCarran provisions, as in the case of Mrs. Allende.

But the fact remains that denials and exclusions continue to be made on the grounds of belief. And the question remains: as long as the legitimate concerns for health, criminal activity and national security are accounted for, why have such a sweeping law at all? The sponsors of the original provisions might not understand, but I think our nation is strong enough, mature enough, and genuinely free enough today to admit that these sections may be an unAmerican activity.

As Justice Brandeis wrote in a brilliant decision in 1927, "Those who won our independence believed that the final end of the State was to make men free to develop their faculties,.... freedom to think as you will and to speak as you think" as a "means indispensable to the discovery and spread of political truth."

APPENDIX 4

STATEMENT OF MORTON H. HALPERIN, DIRECTOR, WASHINGTON OFFICE OF THE AMERICAN CIVIL LIBERTIES UNION, CONCERNING VISA DENIALS FOR IDEOLOGICAL REASONS

STATEMENT OF MORTON H. HALPERIN

DIRECTOR, WASHINGTON OFFICE OF THE AMERICAN CIVIL LIBERTIES UNION

Concerning VISA DENIALS FOR IDEOLOGICAL REASONS

My name is Morton H. Halperin. I am the director of the Washington office of the American Civil Librties Union. As you know, the ACLU is a nonpartisan organization of over 250,000 members dedicated to defending the Bill of Rights.

INTRODUCTION: FREE TRADE IN IDEAS

Let me begin by commending the Commission for holding this timely hearing on the McCarran Act and the problem of ideologically based visa denials. Recent events at the PEN conference in New York have served to remind us that this law -- enacted more than thirty years ago at a period of this nation's history infamous for its disregard for the constitutional rights of free speech and association -- is still in effect. It is a law that continues to do grave damage to the First Amendment rights of Americans and to our image in the world. We think it is time that something be done about it and welcome these hearings as an opportunity to examine U.S. visa practice in the context of our commitments under the Helsinki Accords.

The ACLU was heartened when last month at the PEN conference, Secretary of State Shultz embraced the principle that people should not be shut out of the United States because of their political beliefs. His announcement that "(W)e will never deny physical access to anyone because of the beliefs he or she may espouse(.)" will, we hope, usher in a new era. The past practice of this and of previous administrations has not evidenced such a commitment. Indeed, every administration since Truman's has fallen prey to the temptations of the McCarran Act

provisions and has used it to keep out those with whom it disagrees.

We would like to take this opportunity to point out that the denial of visas on ideological grounds is but one manner in which our government restricts the free flow of information and ideas across our borders in violation of the spirit, if not the letter, of the Helsinki Accords. Last year the ACLU, in conjunction with the Fund for Free Expression, established a Coalition for Free Trade in Ideas. That Coalition brings together more than thirty national organizations including the American Academy of Arts and Sciences, the Association of American Publishers, the Helsinki Watch, the Modern Language Assocation of America and the PEN American Center, which believe that the First Amendment requires the freest possible exchange of ideas. The Coalition embraces the spirit of the Helsinki Final Act and opposes restrictions on the import of ideas and information into the United States; on visits to the U.S. because of a person's beliefs or lawful political activity or association; on travel abroad by Americans because of their political beliefs, activity or association; and on the export of ideas or information that may be lawfully circulated within the United States.

A primary purpose of the First Amendment is to ensure open and robust debate in the "marketplace of ideas". Through this debate, American citizens inform themselves of the public policy choices which shape and affect their lives. However, the free exchange of ideas contemplated by the First Amendment is currently impeded by a number of laws which permit governmental

restriction, control and manipulation of the flow of information into and out of the United States. These laws also stand as an unnecessary blemish on this country's reputation as a leader of free exchange between nations. Charles Z. Wick, director of the United States Information Agency (U.S.I.A.), put it well in a commencement speech he delivered last May entitled "The Power of Information in the Quest for Peace" when he said: "Unless you and I do a better job of explaining to the world how the free flow of information can benefit mankind, other nations will not be persuaded to open their borders to the ideas and opinions of others." Our explanation will be most convincing, of course, if it is demonstrated not only by exhortatory words but by exemplary behavior.

Unfortunately, there are many laws and regulations that impede the free flow of information across our borders. For instance, U.S.I.A. has promulgated regulations that deny an educational certification to films if they are persuasive to a point to view and hence political. Although the regulations were written to augment the international circulation of materials persuant to the Beirut Agreement, the result has been that award-winning American documentaries cannot, as a practical matter, be exported. Such a policy contravenes our commitment to facilitating exchange across national borders.

The U.S. government has also hindered free scientific exchange by applying export control laws to the teaching, publication and scholarly exchange of unclassified scientific research. The Defense Department has forced the withdrawal of

papers scheduled to be presented at international scientific conferences held in the U.S. where foreign scientists were present, where the information to be presented was based entirely on unclassified research. Currently, much to the alarm of the academic and scientific community, the Defense Department is drafting a policy to bar visiting scientists from Warsaw Pact nations and China from using supercomputers in this country. Were such a policy enacted, private academic institutions would be required to police access to supercomputers on the basis of nationality. The costs to academic freedom and scientific exchange are obvious.

The American right to travel abroad, assumed by most to be invulnerable to government restriction, is currently denied by executive branch regulations which prohibit U.S. citizens from spending money incident to travel in both Cuba and Libya. While passports can no longer be denied on the basis of political belief, the administration has used the International Emergency Economic Powers Act and the Trading with the Enemy Act to restrict travel abroad. These same Acts have also been used to prohibit Americans from importing and exporting informational materials to and from embargoed countries. It is currently illegal for Americans to subscribe to Cuban publications and to sell U.S. publications in Cuba.

The Foreign Agents Registration Act also has been used to restrict unnecessarily the flow of imported information in this country by requiring that certain materials bear chilling labels and carry onerous reporting requirements. In February 1985, the American Bar Association adopted a resolution recommending that

the United States not prohibit the import into the United States of any ideas and information if the circulation of that information within this country would be protected by the First Amendment to the Constitution.

IDEOLOGICAL EXCLUSION PROVISIONS OF CURRENT LAW

The focus of today's hearing, however, is on the most widely condemned method of restricting the flow of information into this country: the ideological exclusion of foreigners under our immigration laws.

President Truman's veto message of June 25, 1952 summarizes the essential flaw of the McCarran-Walter Act: "Seldom has a bill exhibited the distrust evidenced here for citizens and aliens alike ..." Indeed, most notable has been the resultant distrust and discrimination against aliens of international reknown: the list of the excluded reads like an international literary, academic and political honor role. And American citizens suffer not only the embarrassment of being unable to host their foreign colleagues, but also the deprivation of being denied the opportunity to meet and talk in this country with foreigners of their own choosing.

The "ideological exclusion" provisions of the McCarran Act are overbroad and invite political manipulation and abuse. Under this statute, an alien is ineligible to receive a visa to enter the United States whenever a consular officer or the Attorney General has reason to believe (1) that the alien seeks entry "to engage in activities which would be prejudicial to the public

interest" or (2) that the alien is or was an anarchist or communist or was affiliated with an organization which supports or advocates those doctrines.

In 1977, in order to achieve greater compliance with the Helsinki Act's basic principle of freedom of travel, Congress passed the "McGovern amendment" to the McCarran Act. It requires the Secretary of State to recommend to the Attorney General that he grant waivers to aliens who would otherwise be ineligible for entry because of their current or past political beliefs or activities unless the Secretary of State certifies that that person is a threat to the security of the United States. At the recent PEN conference three "excludable" authors -- Komo Abe from Japan, Omar Cabezas from Nicaragua and Danilo Kis from Yugoslavia -- were granted waivers under this section.

The McGovern amendment has not been effective in removing ideological barriers to admission. Although many waivers are granted, the application process is all the more cumbersome and time-consuming. Often foreigners do not apply because they do not have the luxury of the time required to secure a visa. Furthermore, because the visa process continues to require an inquiry into an applicant's political beliefs and results in a judgement regarding a foreigner's excludability, many foreigners refuse to apply even though they might well eventually receive a waiver for that particular occassion. Gabriel Garcia Marquez and Graham Greene are two internationally known authors who have refused to comply with what they view as the demeaning requirements of this law. There are, doubtless, scores of less well-known people who refuse to submit to the indignity of

accounting for their political affiliations and thus do not visit our shores.

In addition, the State Department has interpreted the McGovern amendment narrowly, and asserts that it applies only to foreigners' affiliations or membership, but not to belief or activities. Thus members of communist parties are presumptively waived in, but those who espouse communist doctrines should be excluded -- a rather circular construction which eviscerates the amendment's obvious purpose.

In fact in 1985, the cases of two Canadians who were denied entry -- apparently on the grounds of their previous political membership and association -- despite the McGovern amendment, caused a minor furor. Because Canadians do not need to apply for visas to travel to the U.S. they are instead turned away at the border if their names appear on the "lookout book", which includes in its long listing of undesirables, those who our government determines are now, or once were, members of proscribed organizations.

In April 1985, Farley Mowat, the Canadian author of Never Cry Wolf was denied entry for a promotional tour of his new book, Sea of Slaughter. According to one press account, Mowat was in part barred because of his membership in an outlawed left-wing political group. Later offered a one-time waiver -- when it was too late to reschedule the tour -- Mowat rejected the offer as "totally unacceptable" and has since declined invitations to visit the U.S.

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In October, 1985 a former Soviet KGB agent who defected to Canada a decade ago with the help of the CIA and the State Department was barred entry at the border because he once was a member of the Soviet Communist Party. Tomas D. Shuman, now a Canadian citizen, had intended to address a meeting of the Daughters of the American Revolution in Fresno, California.

Finally, while the McCarran Act applies not only to foreign nationals who wish to enter the United States for short, temporary visits, but to those who seek permanent residency as well, the waiver provisions of the Act do not apply to the latter category. Thus, it is of no assistance to Margaret Randall, an American-born Mexican citizen who is currently teaching at the University of New Mexico. In October, 1985 the Justice Department denied Randall's application for permanent resident status based on its reading of her books from which it concluded that she associates with communists and advocates communist doctrines. Many well-known and respected American writers are championing her case.

The McGovern amendment has thus not succeeded in overcoming that portion of the McCarran Act that excludes foreigners on the basis of their political associations and beliefs. It has, however, made the task of ideological exclusions more difficult, and thus the administration has come to rely instead on the vague "prejudicial to the public interest" portion of the McCarran Act. Under that provision, which is not waivable, the Administration has denied entry to foreigners who were coming to the U.S. solely for the purpose of addressing American audiences.

In March of 1983, Mrs. Hortensia Allende, the 68 year-old widow of the last democratically elected president of Chile, was denied a visa to enter the United States. Mrs. Allende was invited to the San Francisco area by the Roman Catholic Archdioses and Stanford University. Her planned speeches on womens and human rights issues were determined to be "prejudicial to the public interest".

In October 1983, the Administration used the same portion of the law to deny visas to two Cuban women who had been invitied by church and university groups throughout the U.S. to discuss issues relating to women and the law. The Director of the Office of Cuban Affairs at the State Department explained that their visit "would have been prejudicial to the public interest by providing these two officials with forums for propagating Cuban policies before U.S. audiences". On October 8, 1985 the President used his proclamatory authority under the same McCarran Act to suspend the entry as nonimmigrants of all officers or employees of the government of Cuba or the Cuban communist party.

Again, in October 1983, Nino Pasti, a former NATO genenral and former member of the Italian Senate was denied admission to speak to groups concerned about U.S. nuclear weapons policies on the grounds that his speech would be "prejudicial to the public interest". Pasti is a critic of the placement of Pershing II and cruise missiles by the U.S. in Europe.

In November 1983, the Administration denied visas to Tomas Borge, the Interior Minister of Nicaragua, and Roberto

D'Aubusisson, a presidential candidate in El Salvador to prevent them from having propaganda platforms in this country. The government thus used this section of the law to exclude both leftists and rightists and denied Americans an audience with these controversial political figures.

CONCLUSION

We believe that our obligations under the Helsinki Final Act, the requirements of the First Amendment and our national tradition of free speech compel the repeal of the ideological exclusion provisions of the McCarran Act. Thus, the ACLU strongly supports H.R. 2361, introduced by Barney Frank (D-MA) along with 60 cosponsors, in its abolition of those provisions and its substitution of strict security grounds for exclusion that are ideology-free.

Foreigners should not be denied entry into this country on the basis of their past or present political beliefs or affiliations, or on the basis of the content of their anticipated speech while in the United States. The First Amendment right of Americans to meet with foreigners in this country free from government censorship rests on the notion, basic to our concept of free speech, that the remedy to falsehood is more speech, not enforced silence. As so eloquently stated by the once-excluded Carlos Fuentes:

> It is hard to imagine that the institutions of this great great Republic, its democratic edifice, its vast economic and military and moral power, can in any way be endangered the physical presence of Graham Greene, Gabriel Garcia Marquez, Dario Fo or Mrs. Salvador Allende. On the contrary: experience has taught us all that it is the application of the exclusionary clause that endangers the

> Republic, mocks Democracy, demoralizes the true friends of the United States, and offers undeserved aces to the Soviet Union...It is a law that hurts me and other foreign individuals. But the real, the permanent, the long range victim of this law is the United States of America.

The free flow of information across our borders is vital not only to the First Amendment, but also to the democratic system which the First Amendment was designed to support. An overdue step in the direction of invigorating our democracy would be to rid our ledgers of the ideological exclusion provisions of the McCarran Act. It is long since time to act.

APPENDIX 5

STATEMENT OF

WARREN LEIDEN, EXECUTIVE DIRECTOR

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

TO THE

COMMISSION ON

SECURITY AND COOPERATION IN EUROPE

CONGRESS OF THE UNITED STATES

CONCERNING

VISA DENIALS UNDER SECTIONS 212(a)(27),(28),(29)

IMMIGRATION AND NATIONALITY ACT

FEBRUARY 6, 1986

Mr. Chairman and Members of the Commission:

I appreciate the opportunity to present the statement of the American Immigration Lawyers Association (AILA) on the subject of the denial of visas to the United States on grounds of political belief and ideology and for foreign policy reasons.

AILA is the national bar association of over 1,900 attorneys with special interest in the field of immigration law. AILA was founded in 1946 and is an Affiliated Organization of the American Bar Association.

The Board of Governors of our Association has not yet adopted a final, comprehensive position on the issues raised by the recent debate over exclusion from the United States on grounds of ideology, political belief, or membership. However, at our 1986 Midyear Meeting in January, the Association

presented a half-day continuing legal education seminar on this subject, and on this basis I am able to outline our preliminary thoughts and considerations.

Generally speaking, AILA would support eliminating those grounds of exclusion that relate solely to past or present membership in certain organizations, or to the past or present belief in or expression of ideas, theories, or doctrines. In line with this view, we would support the repeal of section 212(a)(28) of the Immigration and Nationality Act (INA) and consider such action consistent with the spirit, if not the letter, of the provisions of the Helsinki Final Act.

In our experience, many of the actual exclusions under 212(a)(28) are "membership" cases that routinely qualify for waivers, or could so qualify but for an unwillingness to subject oneself to the process. Moreover, we believe that any meaningful and desirable basis for exclusion under section (a)(28) would also be available under sections (a)(27) or (a)(29).

We do <u>not</u> favor the repeal Section 212(a)(29) of the INA, which excludes aliens for whom there is reason to believe would <u>probably</u> engage in <u>activities</u> prohibited by law or objectively detrimental to national security or safety, except for its subsection (C), the continuation of which is merely an anachronism.

Finally, and it is probably on this point that our Association most sees the need for more study and discussion, we would favor revision of Section 212(a)(27) to either eliminate or significantly clarify the meaning of the language "prejudicial to the public interest." We are concerned that exclusion on this ground, without better criteria or accepted standards, is too open to abuse for venal political or personal reasons.

We hope these preliminary views are of some assistance to the Commission. Under the circumstances, we have refrained from repeating certain examples, arguments, and theories that have received adequate publicity in the recent past.

As practitioners of immigration law, the members of AILA are all too aware that consular decisions to exclude aliens are not readily subject to appeal or review. We are also aware that these provisions are applied not only to celebrities whose cases become well known but also the everyday people, including relatives of U.S. citizens, who can be found excludable from the United States based on facts decades old, or on information that is not revealed and thus cannot be overcome.

Thank you for the opportunity to present our Association's views. We would be pleased to respond if we can be of further assistance to the Commission.

APPENDIX 6

HELSINKI WATCH

U.S. CITIZENS COMMITTEE TO MONITOR THE HELSINKI ACCORDS
KOMITEE DER U.S.-BÜRGER ZUR ÜBERWACHUNG DER HELSINKI-VERTRÄGE
COMITATO DEI CITTADINI DEGLI S.U.A. PER IL CONTROLLO DEGLI ACCORDI HELSINKI
COMITÉ DES CITOYENS DES E.U. POUR LA SURVEILLANCE DES ACCORDS D'HELSINKI
COMITÉ DE CIUDADANOS DE LOS EE.UU. PRO VIGILANCIA DE LOS ACUERDOS DE HELSINKI
ОБЩЕСТВЕННЫЙ КОМИТЕТ С.Ш.А. ПО НАБЛЮДЕНИЮ ЗА ВЫПОЛНЕНИЕМ ХЕЛЬСИНКСКИХ СОГЛАШЕНИЙ

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• Russell Karp
• Edward Kline
• Winthrop Knowlton
• Margaret A. Lang
• Norman Lear
• Virginia Leary
• John Leonard
• Leon Levy
• Leon Lipson
• Elizabeth McCormack
• Robert McKay
• Nancy Mereness
• Arthur Miller
• Toni Morrison
• Daniel Nathans
• Matthew Nimetz
• Eleanor Holmes Norton
• John B. Oakes
• Heinz R. Pagels
• Bruce Rabb
• Stuart Robinowitz
• Felix G. Rohatyn
• Richard Salomon
• John Sawhill
• David Saxon
• Oscar Schachter
• William Schaufele
• Benno Schmidt
• Alan U. Schwartz
• Helen O. Sen
• Donna E. Shalala
• Stanley K. Sheinbaum
• Jerome Shestack
• George Soros
• Michael Sovern
• Svetlana Stone
• Rose Styron
• Jay Topkis
• Liv Ullmann
• Greg Wallace
• Robert Penn Warren
• Glenn Watts
• Anne Wexler
• Jerome Wiesner
• Roger Wilkins
• Maria Wilsons

Holly J. Burkhalter
Washington Representative

Testimony of the Helsinki Watch and The Fund for Free Expression

before the Helsinki Commission

Review of U.S. Visa Policy

February 6, 1986

The Helsinki Watch commends the Helsinki Commission for holding this important hearing on the question United States policies which restrict the free flow of ideas and information across our borders. The Fund for Free Expression and the Helsinki Watch Committee, are two related human rights organizations which advocate free expression at home and abroad and monitor its abuse. The Helsinki Watch, as you know, is particularly concerned with monitoring compliance with the 1985 Helsinki Final Act by its 35 signatories in North America and Europe. In September of 1984, the Fund for Free Expression sponsored a Conference with the American Civil Liberties Union on "Free Trade in Ideas". The conference was co-sponsored by forty-two prestigious national organizations, including the American Association of University Professors, the Association of American Publishers, the Society of American Law Teachers, and the American Academy of Arts and Sciences, among others. During this Conference we conducted live, close-circuit television interviews with a number of

prominent foreign cultural figures who met in Canada to participate in the conference. These individuals, including the Italian playwright Dario Fo, Italian actress Franca Rame, and Italian General Nino Pasti, had been excluded from entering the United States because of their political views.

There have been previous Congressional hearings on some aspects of limitations on the free flow of ideas and information to and from the United States. A hearing by the Helsinki Commission, however, is particularly welcome because it places this issue in the context of U.S. obligations as a signatory to the Helsinki Final Act. As you know, the Helsinki Accords hold that "participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief..." and "will endeavor, in developing their co-operation as equals, to promote mutual understanding and confidence, friendly and good-neighbourly relations among themselves, international peace, security and justice. They will equally endeavor, in developing their co-operation, to improve the well-being of peoples and contribute to the fulfillment of their aspirations through, inter alia, the benefits resulting from increased mutual knowledge and from progress and achievement in the economic, scientific, technological, social, cultural and humanitarian fields. They will take steps to promote conditions favourable to making these benefits available to all..." Even more specifically, the Helsinki Act states that "The participating States intend to facilitate wider travel by their citizens for personal or professional reasons and to this end

they intend in particular: gradually to simplify and to administer flexibly the procedures for exit and entry."

Mr. Chairman, violations of the human rights provisions of the Helsinki Final Act by the USSR and its allies have been carefully documented by this Committee and are well known to you. You do not have to be reminded that the United States' own human rights record stands as a symbol of hope and inspiration to those who take seriously the words of the Helsinki Final Act. Unfortunately, U.S. conduct with respect to the free flow of ideas between our citizens and foreigners is a blemish on an otherwise exemplary record of compliance with the human rights commitments we made in 1985 at Helsinki. Today, our government is implementing a number of policies which deny U.S. citizens the right to travel abroad to certain countries and deny our citizens the right to hear, speak and even debate with their contemporaries abroad by prohibiting entry into the U.S. of persons solely on the basis of the State Department's perception of their political views, label certain foreign films as "propaganda", and restrict scientific exchange. Perhaps the most demeaning to our country are the ideological exclusion provisions of the 1952 McCarran-Walter Act, which have been increasingly used to impose a test of ideological purity on those wishing to enter the United States. As a representative of the New York Bar Association noted at hearings in 1984, the McCarran Walter Act is "a product of the paranoia of the early 1950's," which lumps together "communists and anarchists, prostitutes, professional beggars and psychopaths" among other categories of people who may be denied entry to the United States.

We would like to quote from a letter which the Helsinki Watch received in 1984 from Professor Leszek Kolakowski, a distinguished Fellow at All Soul's College at Oxford University, who is also a Professor of Philosophy at the University of Chicago. Professor Kalakowski was expelled from the University in Poland by Communist Party officials and left Poland in disfavor in 1968. He is a member of KOR, the group of intellectuals who served as advisors to Solidarity, and has been their official representative abroad. In his letter, Professor Kolakowski writes:

> Every time I apply for an U.S. visa (which happens, of course, very often; and I should stress that the visa has never been refused to me), I have to fill a form asking me, among other things, whether I have ever been a prostitute, a drug smuggler or a member of a communist party. Once I say yes (I do belong, indeed to the last category of former communists) I get another form on which I have to specify my crimes... Then the consular officials in London (or wherever it might be) have to get a waiver from the immigration authorities in Washington... then I have to reappear again in the consulate some weeks later and eventually I get the visa... I never got the multiple reentry visa, even though I am a regular professor at the University of Chicago... The details of immigration laws are a mystery not only to me but to much more knowledgeable people as well.

Unfortunately, Professor Kolakowski's humiliating experience is shared by many other distinguished scholars invited to the U.S. to participate in important academic meetings. Many foreigners find our system of ideological scrutiny so demeaning that they refuse to apply for visitor's visas. According to the General Secretary of the British Association of University Teachers, "many of our members, as a matter of principle, consider it anathema to have to attest to their political views and affiliations; thus many academics will not apply because they

do not wish to place themselves in the position of signing declarations to this effect." Increasingly, foreigners whose visit is deemed to be "prejudicial to the public interest" or "subversive to national security" are denied visas altogether.

In recent years, the Act has been used to bar such individuals as the Nobel Laureate author Gabriel Garcia Marquez, Mrs. Hortensia de Allende, widow of slain Chilean leader Salvador Allende; Italian playwright Dario Fo and his wife Franca Rama, an actress; Nino Pasti, a former member of the Italian Senate and a former North Atlantic Treaty Organization (NATO) General, and, most recently, Farley Mowat, the Canadian author of the book, "Never Cry Wolf", which has been widely read in our country. In April 1985, Mowat was denied permission to board a flight from Toronto to Los Angeles, where he intended to promote his latest book, "Sea of Slaughter". Mowat was informed that his name is on a confidential listing of aliens that pose a threat to the United States. Apparently, he is considered politically suspicious and undesirable because he had once written a tongue-in-cheek article threatening to fire at the noisy airplanes of the U.S. Strategic Air Command flying over his home in Nova Scotia and because he had once belonged to an organization that was thought to be sympathetic to Castro's Cuba.

Legislation which has been introduced into the 99th Congress, the bill H.R. 2361, would revise the exclusion and deportation provisions of the McCarran-Walter Act by ensuring that no person is denied admission to the U.S. because of beliefs or peaceful political association and makes only those aliens likely to engage in criminal or terrorist activity excludable.

This legislation would provide welcome relief from the odious provisions now in law, and is welcomed by the Fund for Free Expression and the Helsinki Watch.

Mr. Chairman, the McCarran-Walter Act was enacted in the climate of the McCarthy years, and it is an embarassing remnant of that dark period for American civil liberties. While the concerns articulated during Congressional consideration of the McCarran-Walter Act related to the threat of subversion in the United States, the bill itself concerns itself not with actions but ideas. The very presence on the books of a law which implies that the democratic ideals of American citizens are so fragile that they might be subverted by contact with foreigners holding other views demeans us even more than it demeans foreign visitors who are excluded or forced through a humiliating process of applying for a waiver. It gives our adversaries a ready-made tool with which to discredit the United States at the meetings within the Helsinki context. Exclusing foreign visitors on the grounds that their political views, determined by unelected bureaucrats within the executive branch, are prejudicial to U.S. security is a repudiation of our Bill of Rights and decades of judicial findings which uphold freedom of expression in our country. The law which makes this possible should be repealed.

APPENDIX 7

American
Association
for the Advancement of
Science

1333 H STREET, NW, WASHINGTON, D.C. 20005 (202)326-6400
CABLE ADDRESS: ADVANCESCI

12 February 1986

Senator Alfonse D'Amato, Chair
Commission on Security and Cooperation
in Europe
House Annex 2, Room 237
Washington, D.C. 20515

Dear Senator D'Amato:

The American Association for the Advancement of Science (AAAS) has on numerous occasions expressed its concern about the provisions in the Immigration and Nationality Act (INA) which prohibit the entry of persons to the United States because of political ideology:

- On 22 April 1977, the AAAS President, Executive Officer, and Chair of the Committee on Scientific Freedom and Responsibility submitted a letter to Hon. Robert Drinan welcoming the removal of "those sections mandating the exclusion of visitors to the United States on the basis of their political ideologies."

- In April 1979, at a congressional hearing on U.S. implementation of the Helsinki Accords, then chair of the AAAS Committee on Scientific Freedom and Responsibility John T. Edsall testified on the cases of foreign scientists barred from entering the U.S. or subjected to long delays before receiving entrance visas because of their ideological beliefs.

- In September 1980, the AAAS was one of ten non-governmental organizations contributing to a brief submitted to the President's Select Commission on Immigration and Refugee Policy recommending that the President and Congress repeal Section 212(a)(28) of the INA.

Copies of these earlier statements are enclosed.

The AAAS would once again like to express its concern about this restrictive policy. The exclusion of individuals on the basis of political ideology is a violation of the free circulation of ideas and free travel of individuals, rights guaranteed in the Helsinki Final Act, to which the U.S. is a signatory. Moreover, because of the extensive requirements for obtaining special permission to visit, scientists have been discouraged from applying for such permission. The advancement of science in the U.S. and abroad requires the free exchange of ideas, publications, and personal

meetings and interactions without regard to political ideology. We are not aware of cases in which these restrictions have affected scientists wishing to visit the U.S. in recent years. However, we remain deeply concerned that such restrictions are part of U.S. law and we believe they should be eliminated.

We strongly recommend a repeal of the provisions of the McCarran Walter Act which exclude persons from other countries from entering the U.S. because of their ideological beliefs.

Sincerely,

William D. Carey
Executive Officer
American Association for the
Advancement of Science

Enclosures

AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE ENDORSES REMOVAL OF U.S. VISA RESTRICTIONS

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 9, 1977

Mr. DRINAN. Mr. Speaker, the American Association for the Advancement of Science has joined two other prestigious organizations of scholars, the Federation of American Scientists and the National Academy of Sciences, in endorsing legislation which I have filed to remove from the Immigration and Nationality Act the mandatory denial of visas to present and former members of the Communist Party.

These outdated and unnecessary provisions of our law, enacted over President Truman's veto at the height of the "Red Scare" in 1952, have resulted in the embarrassing exclusion from the United States of many scholars and political figures. Just last month, three Soviet trade union officials were prevented from entering the United States. These exclusions place the United States in violation of the freedom of immigration, travel, and exchange of ideas provisions of the Helsinki Agreement. When the Belgrade Conference convenes later this year to review compliance with the Helsinki pact, the United States will be vulnerable to criticism of its immigration policy. To the extent that we ourselves violate the Helsinki Agreement, our ability to insist on improvements in the human rights policies of other nations will be compromised.

I commend to the attention of my colleagues the letter of support which I have received from the American Association for the Advancement of Science. I also insert below an editorial which appeared in the Washington Post on April 20 criticizing the State Department's denial of travel visas to the three Soviet trade unionists and AFL-CIO President George Meany's reported role in that denial; a letter which I wrote to the Post and which appeared in that paper on May 2 applauding their editorial; and an essay by nationally syndicated columnist Garry Wills which appeared in the Boston Globe today.

Mr. Wills takes the Carter administration to task for denying visas to the Soviet trade unionists and for perpetuating the unnecessary ban on entry into the United States by members of the Communist Party.

Mr. Wills writes:

What is hard to understand is the way we make trouble for ourselves on foreseeable tomorrows at Belgrade by today's trivial ban on three Russian visitors. It is not so much wrong as dumb; because it lets those in the wrong include us in their ranks.

The letter from the American Association for the Advancement of Science and the editorials follow:

AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE,
Washington, D.C., April 22, 1977.

Hon. ROBERT F. DRINAN,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DRINAN: The Board of Directors and the Committee on Scientific Freedom and Responsibility of the AAAS would welcome legislation that would remove from the U.S. Immigration and Nationality Act those sections mandating the exclusion of visitors to the United States on the basis of their political ideologies. Visa applications from members of the political "ineligible" organizations are not automatically rejected, and in fact are often accepted, but their applications must go through a special waiver procedure which involves additional time and paperwork.

It is particularly in the interest of free circulation of scientists that we support the removal of these restrictions. The nature of scientific inquiry is such that it requires a consistent free exchange of ideas through personal meetings and interactions, as well as exchange of publications, without regard to political ideology. Any attempt by one country to restrict such exchanges of ideas, therefore, is an inhibition upon the international character of the scientific endeavor.

As noted in a recent report prepared by the British Council for Science and Society: "Experience has shown that there can be no substitute for personal travel as a means of diffusing scientific knowledge throughout the world, and no substitute for personal dialogue and confrontation of opinion in advancing scientific knowledge. Restrictions on international travel are therefore a most serious interference with the activity of science, and a major threat of scholarly freedom."

From the inquiries which our office has conducted into this matter it appears that qualified foreign scientists, who may also happen to be or have been members of one of the restricted political organizations, almost always do receive visas and are able to accept invitations to visit the United States in order to pursue their professional exchanges. However, the added paperwork involved in handling such cases appears to place a quite unnecessary burden on our consular services and on the State and Justice Departments with no compensating gain.

Moreover, the requirement of obtaining special approval for a visa to this country creates for foreign visitors an invidious and unnecessary distinction between members of the restricted political organizations and other visitors. Some of them actively resent being placed in such a special category; if we are trying to create good will among our foreign visitors, the existing provision in the immigration legislation works against our own best interests. As you have pointed out, these current provisions of the law are in violation of the provisions of the Helsinki Final Act relating to freedom of travel and the free exchange of ideas. If we are to raise objections to violations of this Act by foreign countries, as we have indeed been doing, we must stop violating the intent of the Act ourselves.

As your proposed bill makes clearly evident, these changes would not impede the authority of the Attorney General to refuse admission to individuals for whom there was evidence that their entrance into this country might be harmful to the interests of the United States. To prescribe by law the exclusion of all individuals of a given party or class, however, is a clear violation of the provisions of the Helsinki Final Act and the principle of free circulation of scientists. Your proposed bill would correct this anomaly, and we therefore welcome your intention to introduce it.

Sincerely,

EMILIO Q. DADDARIO,
President, American Association for the Advancement of Science.
WILLIAM D. CAREY,
Executive Officer.
H. BENTLEY GLASS,
Chairperson, Committee on Scientific Freedom and Responsibility.

OUTLINE OF JOHN EDSALL'S TESTIMONY BEFORE THE FASCELL COMMISSION

Visa Restrictions Outline

AAAS policy is to promote the free circulation of scientific ideas without restriction based on political belief. Such ideas are exchanged by publication and by the international travel of scientists to attend scientific meetings and give lectures. Political restrictions which affect such travel thus impede the circulation of scientific ideas, and the Association has gone on record opposing such restrictions (refer to Drinan letter from NAS, AAAS, FAS).

The current immigration laws of the U.S. prohibit the issuance of temporary visas to individuals whose political beliefs fall within a restricted category. Under the terms of the Helsinki agreements, U.S. policy is to waive such political restrictions for individuals taking part in scholarly or cultural exchange activities in this country (refer to Helsinki). In general, since the McGovern amendment, this policy has been implemented in a liberal way, as to remove automatic exclusion of foreign scientists and others who might express belief or support for political doctrines previously restricted by our immigration laws. However, in some cases the policy has remained unchanged, or foreign visitors have been excluded on grounds other than political beliefs, thus making the waiver procedure more difficult to implement. Foreign scientists invited to lecture or participate in scientific meetings in the United States thus continue to suffer the embarrassment of being denied entry to a country proud of its rights to freedom of speech. As stated by Professor Eric Burhop, a Fellow of the Royal Society in Britain, "Even today many scientists, including myself, can only obtain a visa to enter the USA through the loophole of the McCarran Act, often involving a humiliating interrogation." (THE SCIENCES, November 1977).

What is most desirable from the point of view of scientists, therefore, is the removal of these restrictions from the U.S. Immigration laws. Short of this, a liberal waiver process aggressively administered by our Department of State is the best alternative.

The other area of concern involving scientific travel and political restrictions is the controls placed on the travels of foreign scientists while visiting the United States. Our Department of State has divided the U.S. into "Open and closed" areas as part of our diplomatic relations with the Soviet Union and East European countries. Based on this classification, foreign visitors are generally not permitted access either to visit laboratory facilities or people in areas declared "closed" on the basis of defense interests or a desire to maintain balance between our technological exchange programs. In practice, foreign visitors participating in scientific exchange programs are exempted from the restriction on closed areas, although their travel itinerary is reviewed in advance in order to determine any potentially sensitive areas. Soviet diplomats, on the other hand, are restricted.

It appears questionable at this time whether such a travel restriction policy will also be applied to the Chinese scientists, who are currently seeking expanded scientific exchange with the United States. In the interest of science, it is important to promote free access to all individuals who wish to exchange information, without arbitrarily assigning the need for screening or political controls. Although our national security needs are understandable, I question whether such criteria should be applied to those

individuals who are travelling solely for the purpose of scientific exchange. Furthermore, the existence of travel restrictions represent some indication of a policy contradictory to the "free travels" spirit of Helsinki.

Several individual cases have been called to my attention which involve the principles of free travel. Although the circumstances differ in each case, they represent instances in which political or administration decisions have impeded the principle of free circulation of scientists. We believe these decision represent exceptions to the general policy of our Department of State, but we note with concern that there are very few alternatives available to individual scientists who are denied their visas or who are unable to participate in meetings based on the delays in processing their applications.

1) Dr. Sylvia Berman. Dr. Berman is an Argentine psychologist, previously president of the Federation of Argentine Psychologists. She is currently residing in exile in Mexico City, having witnessed the arbitrary arrests and disappearances of several family members in Argentina. Dr. Berman is alleged to have previously expressed Marxist beliefs.

In 1978 Dr. Berman was invited to participate in a meeting of the American Public Health Association in Washington, D.C. Upon her application for a visa in Mexico City, she was informed by the consular officer that a visa could not be issued to her. The PHA and the American Association for the Advancement of Science immediately appealed on behalf of Dr. Berman, and a visa was issued to her shortly before the conference, allowing her to participate.

2. Dr. Gunder Frank. Professor Frank is a former student of the current President of the AAAS, Dr. Kenneth Boulding, who called to my attention the circumstances surrounding his visa status. It is a complicated case, as Dr. Frank was previously a permanent resident of the United States, who has now been living abroad for more than a decade.

Dr. Frank, a sociologist who has expressed communist beliefs in his writings, has applied for a visa to participate in scientific meetings several times. He has consistently been denied the visa on several bas , including his "affiliation with various communist causes over an extended period" (cited from a letter from State) and information indicating his desire to restore his previous U.S. permanent resident status while travelling under a non-immigrant visa. Under the terms of the McGovern act, the first exclusion is waiverable; the second is not. Professor Frank replied to State, however, in December 1978, indicating that he had a tenured position in England and was currently remodelling his home there, and had no desire to restore his permanent resident status. He indicated that he had no knowledge what evidence State had regarding such an indication. A phone inquiry from AAAS to State last week indicated that no response has been made to Professor Frank's reply. If he were to apply again, it is likely that he would be denied, on the basis of information that neither he nor outsiders can obtain. This case appears to be a flagrant violation of the "free travel" spirit of the Helsinki Accords.

3. Professor Needham. In 1975 Professor Needham, a distinguished historian of Chinese science, was invited to give a series of lectures at the University of Washington. He was denied his appliation for a visa,

and the State Department refused to provide the basis for the denial until several months later, when it was informally acknowledged that it was on the basis of his political beliefs, allegedly Marxist. Following expressions of concern by MIT faculty and administration, he was informed that he could apply for a waiver and that his application would be reviewed by State, which he refused to do unless presented with the information that was the basis for the previous denial. Such information was not provided by State.

Professor Needham was later invited in December 1975 by Senator Fulbright to participate in a program the following year. Needham informed Fulbright of his previous visa difficulties, and in April 1976 State indicated that they would issue Needham a visa without the necessity of his filing a waiver application. Since that time, Professor Needham has travelled several times to the United States without apparent difficulties. However, the problem of citing unconfirmed information as the basis for denials continues as noted in the case of Professor Frank.

4. Professor Jean Peirre Vigier. Professor Jean Pierre Vigier is a French physicist, a Marxist, who was invited to participate in the AAAS Annual Meeting in Houston, Texas this past January. Although he had previously traveled to the United States without difficulty, Professor Vigier experienced an unexpected delay when he applied for his visa in November 1978. The U.S. counselor's office informed him that the visa application would have to be reviewed in Washington, causing a four-week delay which affected his application for travel funds from the French government. Although a visa was issued to Professor Vigier on December 27, the delay made it impossible for him to participate in the conference. AAAS has protested the delay and has requested that an apology be made to Professor Vegier for the action.

American Association
for the Advancement of Science

1776 MASSACHUSETTS AVENUE, NW, WASHINGTON, D. C., 20036

Phone: 467-4400 (Area Code 202) Cable Address: Advancesci, Washington, D. C.

STATEMENT

The American Association for the Advancement of Science is on record in support of removal of provisions of the U.S. Immigration and Nationality Act that mandate exclusion of foreign visitors to the United States, including scientists, on the basis of their political ideologies. For nearly three decades these provisions have obstructed and penalized the process of open international travel and exchanges on which U.S. scientific progress is premised. They are in direct conflict with the spirit and letter of the Helsinki Final Act to which the United States and its scientific community are committed irrevocably. Such outmoded provisions, which hold scientific travel and exchanges hostage to political and procedural harassment, yet are not essential to the national security, place a pointless burden on the advancement of science and should be stricken from our laws. For these reasons, the American Association for the Advancement of Science endorses and supports the brief on the McCarran-Walter Act submitted by the Lawyers' Committee for International Human Rights.

William Nobles

William D. Carey
Executive Officer

August 5, 1980

APPENDIX 8

U.S. Department of Justice

Immigration and Naturalization Service

CO 703.1525

Office of the Commissioner

Washington, D.C. 20536

APR 15 1986

The Honorable Alfonse M. D'Amato
Chairman
Commission on Security and Cooperation
in Europe
Congress of the United States
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter of February 18, 1986, in which you posed several questions relating to certain exclusion provisions of the Immigration and Nationality Act. As you noted in your letter, your invitation to me to appear at the Commission's hearing on February 6 was unfortunately received too late to allow me to participate. I hope that the information that is being provided here will be of use to you at the upcoming meeting on compliance with the Helsinki Final Act.

So that our responses will be easier to follow, we have restated the questions you asked, followed by our response.

QUESTION:

1. The House Subcommittee on Immigration has under consideration legislation (H.R. 2361) that would remove membership in communist organizations and advocacy of communism and anarchism as grounds of exclusion from the United States. This legislation does retain provisions for exclusion of spies, saboteurs, terrorists, persons who are expected to try to overthrow the government by force, and those expected to engage in criminal acts which endanger the public safety or national security. In your view, would passage of this legislation undermine the government's ability to protect the national security? In other words, is it acceptable to exclude people only for anticipated acts, not because they are members of certain organizations or advocate certain doctrines?

ANSWER:

1. Revision of the political opinion exclusion grounds was considered by the Select Commission on Immigration and Refugee Policy and then omitted in the Commission's final recommendations. The fact that the Commission, which was very willing to consider

many controversial aspects of the immigration law, decided to follow this course, should indicate the need to proceed with caution in this area. While general agreement exists that certain provisions could be revised, there is no easy task in store for anyone who tries to develop substitute language to meet legitimate foreign and domestic policy considerations.

In our view, Section 212(a)(27) of the Immigration and Nationality Act must contain language allowing the Executive Branch to deny admission to aliens whose entry would harm U.S. interests. Provisions which are so narrowly drawn as to bar only persons who might be coming to engage in acts of violence or terrorism would not be adequate.

QUESTION:

2. The Immigration and Nationality Act has been criticized for giving too much discretion to the officials who administer it. They point to the phrase "prejudicial to the public interest" in Section 212(a)(27) and to the phrase "activity subversive to the national security" in (29). Do you think deletion of these phrases from the law would endanger national security, and if so, how?

ANSWER:

We believe that these phrases should be retained because they serve a necessary function in administering Sections 212(a)(27) and (29) of the Immigration and Nationality Act. In our view, these phrases constitute a reasonable standard by which the Executive Branch can judge the possible harm which might be caused by the entry of a particular alien.

In our experience, where the decision to deny admission has become a matter of controversy, the dispute has centered not on the existence of authority to make such determinations, but rather whether the decision was correct. Put succinctly, disagreements over the application of these standards have focussed on differing assessments as to the nature or degree of harm the admission of a particular alien might cause.

The determination as to whether the admission of an individual might reasonably be expected to be "prejudicial to the public interest" within Section 212(a)(27) of the Act can be difficult. The determination might require an assessment of intelligence reports, or fragmentary information, and an analysis of possible reactions to the individual's entry, both here and abroad. Clearly, there cannot always be exactitude in such determinations.

We do not believe that deletion of this phrase is advisable. It provides a reasonable means for the Executive Branch to bar the admission of aliens whose presence, in balance, would cause more harm than benefit to the United States. Substantial considerations of foreign or domestic policy, or both, might militate against the admission of certain individuals in certain instances. The "public

interest" language of Section 212(a)(27) of the Act provides a mechanism to deal with such situations. Deletion of the phrase would leave a vacuum, which the remaining language of that section could not fill.

The language of Section 212(a)(29) of the Act which the Commission has questioned, "activity subversive to the national security", has not, to our knowledge, been construed in an inappropriate manner. An example of its application may be found in Matter of Rivero-Diaz, 12 I & N Dec. 475 (BIA 1967). In that case, a Cuban national was found excludable under Sections 212(a)(27) and (29) because of his activities against the Government of Cuba.

QUESTION:

3. The exclusion of Farley Mowat, the Canadian author, from the United States has received considerable press coverage and has been cited as an example of exclusion from the United States on the grounds of ideology or political opinion. Please give us the details of this case, the grounds for exclusion, etc.

ANSWER:

3. On April 23, 1985, Farley Mowat presented himself for inspection at the Toronto International Airport. The immigration officer on duty noted that Mr. Mowat was listed in the INS Service Lookout System and advised Mr. Mowat that his inspection could not be completed without further inquiry at the Peace Bridge, Buffalo, New York. This is standard procedure for persons whose names appear in the INS Lookout System, as the information which is the basis for lookout is not always available to the individual inspecting officer at every designated port of entry.

The lookout in Mr. Mowat's case stems from certain statements and activities attributed to him and reported to this agency. This triggered an inquiry by the Immigration and Naturalization Service (INS), concerning his background and activities in Canada. The INS inquiry was initiated to determine whether Mr. Mowat was an alien whose admissibility to the United States should be reviewed.

The INS inquiry produced reliable information which identified Mr. Mowat as allegedly having been involved with organizations and having engaged in activities in Canada that may be proscribed by the Immigration and Nationality Act. On the basis of this information, Mr. Mowat was placed in the INS Lookout System as early as November 1968, to afford INS an opportunity to question him concerning his admissibility to the United States should he, at some future time, apply for admission. Specifically, Mr. Mowat was to be questioned to determine whether he would be inadmissible to the United States under the law by reason of any prior associations or activities in Canada.

On April 26, 1985, Mr. Mowat was again in indirect contact with INS during a televised interview with the INS District Director at

Buffalo on the NBC "Today Show." During that interview, the District Director acknowledged that INS had requested Mr. Mowat to appear at a land border port of entry to permit INS to discuss his admissibility and determine whether his entry into the United States was possible. The District Director indicated that such a discussion could result in a decision to admit Mr. Mowat into the United States.

The District Director also indicated that Mr. Mowat might be allowed to temporarily enter the United States with an available waiver even if he were found to be inadmissible. (An alien who is inadmissible to the United States, upon recommendation of the Secretary of State, may be granted a waiver of the ground of inadmissibility and admitted temporarily to the United States in the discretion of the Attorney General pursuant to Section 212(d)(3) of the Immigration and Nationality Act.) The District Director also noted that INS could not make any decision concerning admissibility without the opportunity to further question Mr. Mowat.

On April 26, 1985, at the request of the Canadian Government, and in consultation with the Department of State, Commissioner Alan C. Nelson, authorized the parole of Mr. Mowat into the United States for the purpose of completing the business he had planned to conduct when he was initially inspected on April 23, 1985. (Pursuant to Section 212(d)(5) of the Immigration and Nationality Act, the Attorney General may in his discretion parole an individual into the United States temporarily for emergent reasons deemed strictly in the public interest, and that such parole shall not be regarded as an admission.)

In announcing the parole decision, Commissioner Nelson said, "In the interest of international harmony, we are permitting Mr. Mowat to come to the United States to complete his business. This action should meet Mr. Mowat's needs while still preserving the interests of the United States Government."

Mr. Mowat rejected the authorized parole. Mr. Mowat also stated he would not submit to any further INS inspection. Without that inspection, under immigration law, the Government can not admit Mr. Mowat to the United States.

QUESTION:

4. Please explain the procedure INS uses to decide whether or not a person applying for entry into the United States is ineligible under Sections 212(a)(27), (28) and/or (29). Is the decision made by the INS officer at the border? What evidence is used? Does the applicant have sufficient time and opportunity to rebut information produced by INS? Is an applicant able to appeal his case to a supervisor immediately upon refusal? What kinds of cases are referred to supervisors? What kinds of cases are referred to INS headquarters in Washington?

ANSWER:

4. The procedure for determining admissibility of an alien who is thought to come within Sections 212(a)(27), (28) or (29) of the Immigration and Nationality Act are governed by Section 235(c) of the Act and the regulations found at 8 C.F.R. 235.8. If an immigration inspector believes that an alien is excludable under any of these provisions, then he or she will deny admission and report the case to the District Director, who in turn reports the case to the Regional Commissioner. If the Regional Commissioner is satisfied that disclosure of the information establishing excludability would be prejudicial, and that the alien is excludable, he may order the alien excluded without a hearing. In other instances, and more commonly, the alien is referred to an immigration judge for an exclusion hearing. At the hearing, the alien is entitled to counsel and may present evidence and cross-examine witnesses. The alien will not however, be provided any classified information. If a hearing is accorded before an immigration judge, then the alien may appeal an adverse decision to the Board of Immigration Appeals, and if unsuccessful there, to a district court.

QUESTION:

5. The Select Commission on Immigration and Refugee Policy recommended in 1981 that the decision to deny visas on foreign policy grounds (under subsection 27) be made by the Secretary of State or a high-level designee at State instead of by a consular officer or the Attorney General, as the law now specified. Would this change in the law cause INS any problems?

ANSWER:

5. We believe that this question may be based on a mistaken assumption regarding the functions of the Secretary of State, the Attorney General and consular officers. Under Section 104 of the Immigration and Nationality Act, consular officers are the only officials authorized to grant or refuse a visa.

We would defer to the Department of State on this matter.

QUESTION:

6. Would it be useful to amend the visa law to include a waiver mechanism for denials under 212(a)(27) and (29) so that economic interests or foreign policy interests could be taken into account in considering the admission of some individuals -- such as for trade negotiations, for example, or to prevent retaliation against the visit of some American official?

ANSWER:

6. This question is addressed to changes in the "visa law", which is a matter more appropriately directed to the Department of State.

To the extent that the question could apply to admissibility, rather than visa issuance, we would respond that the public interest considerations the Commission refers to could be taken into account under the existing language of Section 212(a)(27) of the Act. As the adverse effects of an alien's admission can presumably be balanced against the benefits of the admission, there does not appear to be any need to provide a waiver.

A waiver of a ground of excludability under Section 212(a)(29) of the Act could presumably be provided, although it is difficult to envision the circumstances under which a waiver would be granted. If an alien is coming to the United States to engage in activities prohibited by the laws relating to espionage, sabotage, public disorder or the overthrow of the government by force, it is not readily apparent to us that a waiver would ever be more than a theoretical possibility.

QUESTION:

7. The number of people refused visas is not large, so the problem raised by the so-called ideological exclusion sections of the visa law does not seem to be so great as some of the critics contend. But these critics state that the problem is in fact larger than it seems because many applications are abandoned when delays in visa issuance prevent arrival in time for scheduled events, and because many people don't apply when they know the process will be too time-consuming and, to some applicants, humiliating. How do you respond to these views?

ANSWER:

7. This question refers to delays and other problems relating to issuance of visas, which is not a function of INS. We do not know that the exclusion grounds the Commission has questioned result in the abandonment of visa applications because of delay, or embarrassment on the part of the visa applicant. The Department of State would more appropriately be queried on this matter.

Sincerely,

Alan C. Nelson

Alan C. Nelson
Commissioner

cc: Steny H. Hoyer
Co-Chairman
Commission on Security and
Cooperation in Europe